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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1983

Addendum

MADAGASCAR */

[13 July 1990]

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*/ For the initial report submitted by the Government of Madagascar see document CCPR/C/1/Add.14. For its consideration by the Committee, see documents CCPR/C/SR.83, SR.84 and SR.87 and the Official Records of the General Assembly, Thirty-third session, Supplement No. 40 (A/33/40), paras. 258-292.

FOREWORD

1. The Malagasy Republic approved the signature of the International Covenant on Civil and Political Rights, and the Optional Protocol thereto, under Act No. 70-001 of 23 June 1970.

2. Ir 1977, for the first time Madagascar submitted a report, together with the main legal texts forming the legislative framework for the protection of civil and political rights.

3. Madagascar's initial report was submitted to the Human Rights Committee on 17 July 1978, and the discussion of the report was completed on 19 July 1978.

4. The Human Rights Committee is in possession of the 1977 report and, in addition, document CCPR/C/1/Add.14 of 21 September 1977, which reproduces the essential legislative provisions and regulations that safeguard civil and political rights.

5. Ambassador Henri Raharijaoua, the representative of the Democratic Republic of Madagascar, gave a verbal presentation of the overall institutional background for the protection of the civil and political rights recognized in the Covenant and he provided additional information. He answered various questions raised by members of the Committee and, as far as possible, supplied clarification and gave explanations in regard to any objections made. Reference may be made in this regard to the summary records, more particularly documents CCPR/C/SR.83, SR.84 and SR.87.

6. This report will not discuss matters regarded as acceptable, or unchanged texts that have already been submitted or replies which proved satisfactory to the members of the Committee. It will, however, endeavour to fill in any gaps pointed out by members of the Committee and supplement replies deemed inadequate.

7. Moreover, Madagascar has paid special attention to all the reminders it has received about submitting the second and third reports, scheduled for 3 August 1983 and 3 August 1988 respectively.

8. Special circumstances have led to this delay, as explained by Ambassador Blaise Rabetafika, the Permanent Representative to the United Nations. The reasons he gave were made worse by economic and social difficulties after 1978, in a period which compelled the authorities to carry out rehabilitation, structural adjustment and economic recovery measures to establish and strengthen the legal and political situation (more particularly consolidation after the 1982 elections of the decentralized communities, increasing the authority of the Constitutional High Court, reforming the Supreme Court and allowing greater freedom for the Press). This situation has led to the inclusion in the report of new factors - promotional factors also sought in the guidelines adopted by the Committee on 27 July 1981.

9. Stable legislation and progress in the real implemention of the provisions of the Covenant make it possible for Madagascar to reaffirm its attachment to the various human rights conventions and its determination to respect them, regardless of any technical or material circumstances that led to the delay mentioned in the reminders, which Madagascar has always taken into consideration.

PART I

10. In view of the involuntary delay, Madagascar is submitting in this report the material which should have appeared in the second and the third reports.

11. It has not escaped the notice of the Malagasy authorities that this kind of submission, in a single document, is not consistent with the guidelines dated 27 July 1981. However, the second report should have covered a period that is long since past (1978-1983) and, since the documentation accumulated for the preparation of the report was abundant, it has been deemed more practical to submit the two reports in a single text.

12. This exceptional step has been taken to catch up on a delay of which Madagascar is only too well aware, but if it should hinder consideration of the report to follow the initial report of 1978, the Malagasy authorities are ready to prepare two reports on the periods in question.

13. The overall legislative background of the provisions protecting civil and political rights was described in the initial report. However, in view of the lengthy period separating the submission of the first and the second and third reports and of the findings made in implementing basic legislation, it has been deemed necessary to make some comments, in the spirit of the 1981 guidelines, comments which go beyond law in the abstract, and place the implementation of legislative provisions and regulations in a social context.

I. THE GENERAL LEGISLATIVE FRAMEWORK

A. The Charter of the Malagasy Socialist Revolution and the Constitution

14. On the date on which this report was drafted, the basic laws of the Democratic Republic of Madagascar consisted of the Charter of the Malagasy Socialist Revolution and the Constitution. No change has occurred in regard to the content or the status of these texts: the fundamental law is the Charter, while the Constitution of 31 December 1975 is the method of implementation. The laws adopted by the People's National Assembly come next, in conformity with the Charter and the Constitution.

15. The field covered by laws is specified in article 72 of the Constitution. Under article 73 of the Constitution matters other than those pertaining to laws are regarded as regulations. In other words, the Executive may legislate by means of regulations, which may be made up of decrees adopted in the Council of Ministers or presidential orders issued by the President of the Republic assisted by the Prime Minister or by delegated members of the Government (art. 62 of the Constitution).

16. Ordinances are legislative texts containing measures falling within the field covered by laws and they may be issued, between sessions of the People's National Assembly, in the Supreme Council of the Revolution, by the President of the Republic (arts. 56 and 57 of the Constitution). Ordinances enter into force on publication, but are subject to confirmation by the People's National Assembly at the start of the next session. Exceptions to this rule of confirmation are finance ordinances issued when the Finance Act is not voted by the People's National Assembly within the specified period, ordinances that are issued when a situation of emergency or a state of necessity has been

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proclaimed by the Council of Ministers after consultation with the Constitutional High Court, and ordinances that are issued for the implementation of a specific action programme under powers delegated for a limited period by the People's National Assembly (arts. 56 and 61 of the Constitution).

17. The question could be asked as to what extent the Charter of the Malagasy Socialist Revolution is legislative in character. In this regard, writings by jurists and judicial precedents are virtually unanimous in recognizing that it is legal in character. The ideology set out in the official texts must guide the actions of the public authorities and the persons under their authority, and it thus becomes legitimate. The following may be cited in support of the view that the Charter is legislative in nature:

(a) Decision 79-030-HCC/D of 20 December 1979, in a plea regarding the unconstitutionality of article 5, paragraph 2, of Decree No. 66-174 of 30 March 1966, establishing sexual discrimination in access to employment for clerk/book-keepers - a plea brought before the Administrative Chamber of the Supreme Court. The ruling includes, inter alia, the following reason: "In view of the principles set out in the Charter of the Malagasy Socialist Revolution, which enunciates the dignity and value of the individual, equality of rights and the abolition of any form of discrimination and injustice". In that instance, the Constitutional High Court had declared that a provision of Decree No. 66-174 establishing discrimination between men and women in access to employment as clerks/book-keepers was inconsistent with the Constitution - a provision that is inconsistent with article 3 of the Covenant;

(b) In July 1988, the Higher Institute of Law, Economics, Management and Sociology (EESDEGS) and the Malagasy Academy had organized a scientific seminar on the Constitutional High Court and one of the conclusions that was drawn pointed to the status of the Charter as law and the elaboration of a new concept in Malagasy law, namely a political-legislative bloc termed the "Charter-Constitution", applicable to the public authorities, including the judicial authorities.

18. One of the features of laws is that they can be amended. The Charter allows for such a possibility in its final provisions ("in the implemention we shall discuss ... matters to be eliminated"). This affords an opportunity to answer one of the questions raised in the Human Rights Committee, namely, what the procedure is for changing or amending the Constitution. The reply is found in articles 105 et seq. of the Constitution: the initiative for a review lies both with the President of the Republic and with the People's National Assembly and the Assembly alone is entitled to adopt, by a three-quarters majority of the members, any bills or proposals to alter the Constitution. However, the President may submit a review of the Constitution to direct referendum (arts. 105 et seq. of the Constitution).

19. It is apparent from the foregoing, as well as from articles 3 to 42 of the Constitution, that protection of human rights, and particularly the civil and political rights set forth in the Covenant, lies within the purview of the law and is thus safeguarded by the compulsory action of the People's National Assembly, which reflects the will of the people through the votes of the deputies, and by supervision by the Constitutional High Court.

20. Admittedly, in exceptional circumstances provided for in article 81 of the Constitution, action by the People's National Assembly is not envisaged in the case of ordinances issued by the President under conditions laid down in the Constitution. Nevertheless, the Constitutional High Court always plays a monitoring role (art. 93 of the Constitution).

21. Again, since the state of necessity was ended (1975 Constitution), no emergency provision has been enacted by the Executive. Powers to implement a particular programme of action can be delegated only for a set of economic and social measures over a specific period and they must not normally affect the individual's rights and prerogatives as provided for in the Covenant. In any event, the People's National Assembly has not yet been asked to grant any such delegation of powers.

B. Constitutional High Court

22. It should be pointed out that the Constitutional High Court, provided for in articles 88 to 99 of the Constitution and organized under the terms of Ordinance No. 77-032 of 29 June 1977, rules on whether laws, ordinances and regulations comply with the Constitution, settles conflicts of jurisdiction as between State bodies and decentralized communities, ensures that elections, including elections for the Presidency, are conducted in due and proper form, rules on disputes concerning elections and referendums and performs the duties of legal advisor, and may be consulted by the President on whether any draft law or decree or interpretation of a legislative provision is constitutional.

23. The Constitutional High Court was established in 1978, under the Constitution of 31 December 1975. In the following 10 years, the High Court engaged in the following activities:

(a) Monitoring of constitutionality:

326 ordinances,

54 draft laws,

3 legislative proposals,

6 texts concerning the rules of procedure of the People's National Assembly,

10 draft decrees;

(b) Plea of unconstitutionality:

19 cases;

(c) Election disputes:

206 orders concerning general elections,

4 orders concerning presidential elections,

(d) Referendums and interpretations of texts:

15 opinions;

(e) Deliberations on the internal organization of the High Court:

33 deliberations.

24. It should be noted that these figures do not include the decisions rendered by the Constitutional High Court in 1989, during which presidential, general and decentralized community elections were held. These figures do not all concern the protection of civil and political rights, but they are an indication of the vitality of the institution.

25. The Constitutional High Court, in its decisions, has always been at pains to specify that its role is limited to monitoring the constitutionality of legislation. It does not judge the merits, but decides whether or not the case is in conformity with the Constitution. However, in connection with the plea of unconstitutionality, the High Court has a fundamental part in protecting basic rights and freedoms and making them effective. The Constitution gives private individuals the initiative in monitoring the constitutionality of laws and regulations a posteriori. Hence, it assigns citizens the task of ensuring that the laws are in keeping with the Constitution, in particular when the laws cause them harm. There are, however, two limits on this control by citizens.

26. The first is a de facto limit. Prior monitoring of constitutionality is already subject to a priori monitoring under the Constitution. But when the acts in question involve regulations, the possibility of remedy on the initiative of private individuals take on its full importance, in view of the many autonomous decrees and regulations and the possibility of harm to the effectiveness of the rights recognized in the Covenant.

27. The second limit stems from the interpretation of article 94 of the Constitution, which clearly separates the functions of the Constitutional High Court from those of other courts. The High Court rules only on a plea of unconstitutionality, and not on substance. It can only be seized by an application for a ruling of unconstitutionality in a case pending before another court, which must first pronounce a stay of proceedings and allow the party entering a plea of unconstitutionality a period of one month in order to apply to the High Court.

28. But despite these limits, the practice of the Constitutional High Court indicates - even when it has rejected a plea of unconstitutionality - that the Court cannot fail to take account of questions of substance. The Court has made the referral procedure more flexible when it considers it must implicitly examine questions of substance, not in order to take over from the judges who consider the merits but to have all the necessary components to come to a decision confirming unconstitutionality or rejecting the application.

29. In Decision No. 005-HCC/D of 19 February 1985, the Constitutional High Court, while noting that the Constitution takes precedence over all other rules of law, adds: "The monitoring of constitutionality does not confine itself to the formal limitation set out in article 88 of the

Constitution ... censure of all other acts likely to affect the fundamental rights and freedoms guaranteed by the Constitution falls implicitly but necessarily within the competence of the Constitutional High Court".

30. With regard to election disputes, the Constitutional High Court has tried cases involving two presidential elections, three general elections and three decentralized community elections.

31. From an examination of previous decisions by the Constitutional High Court, the following observations can be made:

Citizens are more familiar with the plea of unconstitutionality;

Applications for judicial remedies have gradually increased in number;

The Constitutional High Court has made efforts to refine and set, with complete independence, legal precedents in the matter of election disputes.

The number of applications has increased. The Democratic Republic of Madagascar has not moved towards a single-party system; in the presidential elections held since the implementation of the 1975 Constitution, there has never been only one candidature. This is an indication of the growing importance of the role and activities of the Constitutional High Court.

C. Supreme Court reforms

32. In articles 83 to 86, the Constitution of 31 December 1975 provides for various measures aimed at bringing justice closer to the people, guaranteeing better supervision of the courts' activity and ensuring the participation of citizens in the functioning of the judicial system and in keeping check on it.

33. As to participation by citizens in the functioning of the judicial system, since the initial report the legislature has done nothing to undermine the provisions whereby co-magistrates are associated with professional judges at several levels: criminal courts, labour courts and commercial courts.

34. In view of the gradual establishment of the decentralized communities and the action to improve and strengthen their functioning, the people's courts provided for in articles 83 and 84 of the Constitution have not yet been set up. The decentralized communities none the less play an important part in the operation of the judicial system:

(a) They play a conciliation role in conflicts not involving public order;

(b) They also have responsibilities in public safety, although they do not have the powers of the forces of law and order.

35. The most important reform since the initial report concerns the Supreme Court. Article 86 of the Constitution already stipulated that the Supreme Court should keep a watch on the courts' activity in general and that this was to be done by professional judges elected by the People's National Assembly.

36. Thus the framers of the Constitution had provided that one of the forms of citizens' participation in the judicial system would be the monitoring of the proper functioning of the courts by judges who were professionals but who received their powers from the representatives of the people in the People's National Assembly.

37. The provisions of article 86 of the Constitution were implemented by Ordinance No. 82-019 of 11 August 1982. The Ordinance which has been communicated to the Committee and will be explained in more detail in Part II of the report, establishes a supervisory or monitoring body within the Supreme Court, made up of elected professional judges and Supreme Court judges. This body performs two types of activity:

(a) On the one hand, the court activity already provided for in Act No. 61-013 of 19 July 1961, establishing the Supreme Court and assigning it the examination of applications for judicial review of all decisions rendered in final instance by the courts of the judicial system;

(b) Under articles 14 and 16 of Ordinance No. 82-019 of 11 August 1982, the supervisory body checks on observance by the appeals and other courts of the texts governing their organization and on compliance with due process of law and professional and ethical obligations. This check takes several forms (inspections, inquiries, verifications on the basis of written evidence).

38. The establishment of this body is one of the most positive signs of the Malagasy legislature's will to ensure, through a sound administration of justice, ever-greater protection for citizens appearing before the courts and persons held in conformity with the law, with respect for the rule of equality before the institutions of justice (arts. 2, 6, 9, 10, 11, 14 and 15 of the Covenant).

D. General provisions of private law

39. In its initial report, Madagascar referred to the general provisions of private law that strengthen the general legal framework for the protection of civil and political rights and serve as a reference for the courts because of their complementary nature. These provisions are found in a number of texts, but the main one, cited in the first report, remains Ordinance No. 62-041 of 19 September 1962, which has again been communicated to the Committee.

40. It should be mentioned that the Ordinance contains provisions penalizing abuse of rights (art. 10), on the possibility for a judge to base himself on general principles of law (art. 11), on the right of every citizen to enjoy civil rights (art. 14), on protection against any unlawful attacks on the rights of the individual (arts. 17 and 18), and on protection of the status of aliens (arts. 20 and 21).

41. This is a long-standing nature and lasting ordinance which has not been altered since it was published, and the frequent recourse to its provisions by legal practitioners confirm Madagascar's will to maintain a general legal framework for firm and ongoing protection of fundamental rights and freedoms.

E. Positive law

42. The general legal framework is also comprised of the laws and regulations contained in the following:

(a) The codes: Penal Code, published on 7 September 1962, which has been amended three times since the initial report, under Ordinance No. 77-036 of 21 June 1977, Act No. 78-039 of 13 July 1978 and Act No. 82-013 of 11 July 1982;

(b) The laws, which it would be tedious to list because of their number, but which will be cited whenever they concern protection of the civil and political rights set forth in the Covenant; this is the case in particular for civil or criminal laws or public law on the family, children, aliens, the right of assembly and the right to take part in public affairs.

43. Since the question was raised when the initial report was discussed, it should be remembered that there is no difference whatsoever, either in nature or ranking, between the provisions contained in a code and those set forth in a law - a code being an instrument containing all of the provisions on a sufficiently broad area of the law.

44. Thus, Malagasy civil law is for the time being comprised of a series of laws enacted on various dates but which might in future be codified in a single instrument (amendments, which will be considered in greater detail in Part II, do not basically affect the civil and political rights set forth in the Covenant). These laws are the following:

(a) The Code of Penal Procedure, published on 5 October 1962, which has been amended twice since the last report, under Ordinance No. 77-021 of 10 June 1977 and Ordinance No. 83-022 of 30 September 1983;

(b) The National Service Code of Justice, promulgated by Ordinance No. 62-106 of 1 October 1962 and the Press Charter, provided for in Ordinance No. 74-014 of 21 March 1974, which was amended in Ordinance No. 77-054 of 16 September 1977.

(c) The Labour Code, provided for in Ordinance No. 75-013/DM of 17 May 1975.

II. THE SOCIAL ENVIRONMENT

45. The earlier part of this report has been aimed at highlighting the progress in legislation and the stability of the law protecting civil and political rights. But the effectiveness of the law depends to a large extent on the social, economic and political environment.

46. From 1978 to 1988, Madagascar, like many developing countries, experienced a major economic crisis and consequent social difficulties. These social difficulties are the reason for certain changes in the legislation in force and the maintenance of the emergency courts, whose organization and procedure were explained during the discussion of the initial report. It should be pointed out, however, that no emergency measures have been added to the existing texts.

47. The economic crisis was so serious that the authorities gave priority to the rehabilitation of the economic infrastructure and the implementing of measures to put the economy on its feet again, in particular structural adjustment measures. As everyone knows, these measures initially have adverse effects on the social sector until such times as the economic effects are of direct benefit to the population.

48. Hence it was understandable that Madagascar should take measures that would sacrifice social well-being for the benefit of economic recovery. Indeed the Malagasy population had to accept some sacrifices, one of whose effects was to worsen the social situation of the most disadvantaged. Remarkably, however, at no time did the authorities take any legislative measures to rule out application of the provisions of the Covenant.

49. In particular, it should be noted that:

(a) Monitoring of court activity was introduced in 1982, in the midst of the crisis;

(b) The moral authority of the Constitutional High Court increased precisely at a time when acts of violence might have been feared, due to discontent stemming from the social difficulties;

(c) Measures of clemency have not ceased, despite a rise in crime, in both type and violence. The following legislation has been enacted since the first report was submitted: Ordinance No. 77-033 of 29 June 1977, providing for amnesty; Ordinance No. 85-017 of 16 September 1989, providing for collective amnesty or amnesty on individual petition, depending on the case, and Decree No. 89-125 of 9 May 1989 granting a general pardon.

50. During 1989, an election year, measures were taken for a freer press, the most important being the elimination of censorship. Finally, with the assistance and encouragement of the public authorities, symposia, seminars and workshops were held in Madagascar, either independently by national bodies or in partnership with international agencies such as UNICEF or UNFPA. These meetings, always very successful, dealt in particular with national institutions (scientific symposium on the Constitutional High Court in June 1988), family problems (family law, situation of mothers, day of the child), etc.

51. These events have helped create a favourable atmosphere for a better knowledge of human rights and, in particular, the provisions of the Covenant.

52. In Part I it can be seen that, during the period following the submission of the initial report, Madagascar encountered considerable economic and social difficulties, due mainly to the crisis which shook the world and particularly the developing countries, and that as a result, it was unable to realize its wish of making substantial advances in the effective implementation of the Covenant.

53. However, the progress achieved despite these difficulties is notable if account is taken of the severe economic and financial measures that were needed, without losing sight of what the Charter of the Malagasy Socialist Revolution calls "the development of every man and the development of man as a whole".

54. New instruments have been adopted concerning inter alia the reform of the Supreme Court.

55. The intellectual and moral climate created by the symposia and other meetings have contributed to an improved awareness of civil and political rights, an acceptance of responsibility by everyone in the public sector and private sector (non-governmental organizations) directly affected by the effective implementation of the provisions of the Covenant and a better understanding of the efforts needed in order to make them increasingly effective. The economic progress made, notably since 1985, can only improve the conditions for implementing the Covenant.

PART II

INFORMATION RELATING TO THE ARTICLES

Article 1

56. Article 1 of the International Covenant on Civil and Political Rights is identical with article 1 of the International Covenant on Economic, Social and Cultural Rights. Madagascar considers this identity to be a matter of logic and to confirm one of the most significant aspects of its ideology, namely, that the rights of the individual, irrespective of the sphere in which they are exercised, can be meaningful and effective only to the extent that they are integrated with the rights of peoples.

57. Thus, it is only to be expected that the first provision of the Covenant should recall the need for all peoples to have the right of self-determination, to determine freely their political status and to pursue freely their economic, social and cultural development. This confirmation of the rights of peoples - a prerequisite and an indispensable framework for the rights of the individual - was explained in the initial report, notably by references to the declarations of principle developed in the laws and fundamental legal provisions of Malagasy public and private law.

58. These aspects are embodied in the "Charter-Constitution bloc", the text of which should be in the hands of the Committee. The following quotations from the Charter should be borne in mind: "power begins with freedom and the people can be master of its destiny (control by the people over development) only when it is truly free and independent" and "power is expressed through independent decision-making, the ability to take important decisions concerning the life of society and to apply them".

59. The population of the Malagasy State adopted the Charter-Constitution bloc by referendum. It has already been explained in Part I of this report that provisions are in existence that make it possible to modify, revise or amend these two fundamental laws.

60. Moreover, against the background of those fundamental laws, the authorities, who are trustees of the people's prerogatives, exercise freely and without external constraint the choice of methods for economic, social and cultural development. If an unfavourable economic climate calls for changes in a strategy freely adopted by State institutions, the changes are not the outcome of external pressure but a free choice made by the State. Thus, technical measures for privatization in areas in which the choice is that of the State alone and economic and trade liberalization measures are all taken by virtue of the right of all peoples to self-determination and to pursue freely their economic, social and cultural development.

61. The establishment of decentralized communities throughout the territory of Madagascar has made it possible to organize the free participation of the population in its own economic, social and cultural development. Set up by the Ordinance No. 76-044 of 27 December 1976, the decentralized communities, after 13 years in existence and 13 years' experience, are the context for free participation by everyone in the development of all.

62. After experiencing a long period of direct administration, citizens had to set about taking their own development in hand.

63. The stability of the fundamental laws, as well as that of the legislation on the decentralized communities, which have been amended only slightly since the initial report was drafted, indicates that the affirmation of the right to self-determination in respect of political status and choices of economic, social and cultural development have gone beyond the stage of abstract statements in Madagascar.

64. As to the natural resources of the State, article 7 of the Constitution says: "Public ownership of the principal productive equipment, natural resources, industries and activities vital for the life and progress of the nation ... constitute the basis of the social and political organization of the Democratic Republic of Madagascar".

65. In order to round off the developments described in the initial report on the right conferred on all peoples to dispose freely of their natural wealth and resources, two issues of direct concern to the protection of the national heritage should be considered.

1. Opening up the country to foreign investment

66. An investment code was adopted and published (Act No. 85-001 of 18 June 1985) but is currently being updated. A look at the main provisions of this code shows the will of Madagascar to develop its natural wealth and resources in the context of international economic co-operation. However, it will be seen, in particular, that the Malagasy legislature has taken care to discourage uncontrolled investment, to ensure freedom of choice and control of investment and to organize a legal framework that eliminates monopolies and fosters partnership and respect for commonly accepted rules of international co-operation as well as the protection of means of subsistence of the population. It will also be seen that legislative efforts have been made to give nationals an opportunity of participating genuinely in industrial and agricultural development by the establishment of small- and medium-size enterprises.

2. Protection of natural resources

67. Like many developing countries, Madagascar is confronted with diminishing natural resources due to various factors, whether climatic or man-made. The degradation of the environment, resulting from the improper, misdirected and uncontrolled exploitation of natural wealth undermines the capacity for renewal in terms of the natural capacity for regeneration. In the meantime, the population is increasing.

68. Some figures are called for. Out of a population estimated at more than 9 million inhabitants or thereabouts, almost 2 million are between the ages of 15 and 25 (972,000 men and 930,000 women), and account for almost 20 per cent of the total population. The population is increasing at an annual rate of 2.7 per cent. Eighty-five per cent of the active population work is in agriculture. The combined pressure of land clearing, over-exploitation of timber and periodic fires have led to a quantitative retreat of natural formations, particularly the primary forest, which none the less contains unique or rare species and plants valued for their rarety or therapeutic properties.

69. At the present time, the forest cover is retreating at the rate of 200,000 ha a year, it is estimated that by 2015 the forest will cover only half of its natural surface of 6 million ha.

70. This situation was not unknown but it has become so serious that since the initial report was drafted, a number of measures have been taken to protect the environment. In addition, the legislature has not confined the protection of the natural heritage merely to safeguarding activities but has associated it closely with development.

71. Ordinance No. 82-029 of 6 November 1982 and implementing regulations of 31 March 1983 have been issued in order to safeguard, protect and conserve the national heritage. Ordinance No. 82-030 of 6 November 1982 ratified the Convention for the Protection of the World Cultural and National Heritage (Convention of 16 November 1972, adopted by the UNESCO World Conference at its seventeenth session).

72. A national conservation strategy for development was adopted by the Malagasy Government in 1984 and given practical effect by the establishment of the National Conservation Committee for Development. Since 1987, greater awareness has been achieved, thanks mainly to bilateral foreign aid and additional assistance by international agencies. Thus, the first national strategy for conservation and development in 1984 was supplemented by structures and finalized by the Malagasy authorities. A National Centre for Environmental Research was set up. The specialized research centres in the various domains of natural resource protection have been strengthened. Others have been set up. The governmental structures involved in the protection of the environment and already in existence have been strengthened.

73. In the legislative field, measures have been taken to improve the implementation of existing regulations relating, inter alia, to the protection of forests and the system of land clearing, the exercise of the right of ownership by the State over the wealth of the subsoil, the protection of fauna, punishment for cattle theft, the cultivation and marketing of medicinal plants, the protection of fish-breeding establishments and the regulation of fishing in continental waters. All this legislation was already in existence before the initial report was drafted.

74. A recent piece of legislation, however, deserves mention: Ordinance No. 85-013 of 16 September 1985 setting the limits of the maritime exclusive economic zone, ratified by Act No. 85-013 of 11 December 1985.

Article 2

75. Since the "Charter-Constitution bloc" has not been amended in any way, attention should be drawn to the provisions of article 12 of the Constitution, which guarantees equality for all citizens:

> "The State ensures the equality of all citizens by:
>
> Guaranteeing the unity of the social order and of the socialist legal system, and the unity of the economic system, in the matter of laws and regulations;

Undertaking to remove economic and social obstacles which limit equality between citizens, impede the development of the individual and prevent the effective participation of all workers in political, economic and social organization;

Prohibiting any discrimination based on race, origin, religious belief, educational level, property or sex".

Right to an effective remedy against acts violating the fundamental rights recognized by the Constitution or by the law (art. 2, particularly para. 3, of the Covenant)

76. This right is generally recognized in codes of civil procedure and criminal procedure (method of direct summons) whereby any person may institute proceedings in the event of irregularities and of injuries sustained by him. No change has been made to this principle during the period under consideration.

77. Similarly, Ordinance No. 60-048 of 22 June 1970 on the procedure to be followed in the Administrative Tribunal, as amended by Ordinance No. 62-073 of 29 September 1962 and by Ordinance No. 73-012 of 24 March 1973, together with legislative provisions organizing the Supreme Court, more particularly the Administrative Chamber (Act No. 61-013 of 19 July 1961, as amended by Ordinance No. 62-091 of 1 October 1962, Act No. 65-106 of 16 December 1965, Ordinance No. 73-018 of 11 May 1973 and Ordinance No. 75-0021 of 9 September 1975) have not been changed since they were issued. It will be pointed out simply that they allow the individual access to the administrative courts for redress against statutory acts by administrative authorities or by public corporations.

78. As to pleas of unconstitutionality and election disputes, the information has already been given in Part I of this report. With regard to the general comments by the members of the Committee, a number of them wished to know more about the treatment of non-nationals.

79. In actual fact, the replies to the questions were given when the initial report was being submitted. However, it will be pointed out:

(a) That Madagascar affords aliens the same guarantees and the same rights, subject to the legislative provisions on limitations or prohibitions. As to the status and capacity of individuals, it should be borne in mind that they are still subject to their own national law;

(b) Malagasy law strives to deal with aliens not only in the conventional meaning of the term. It also guarantees protection for stateless persons and refugees. Decree No. 62-001 of 3 January 1962 established the Bureau for Refugees and Stateless Persons, as part of the Immigration and Emigration Department. Immigration is organized and supervised under Act No. 62-006 of 6 June 1962, which applies to persons of foreign nationality and to stateless persons;

(c) Decree No. 67-101 of 13 April 1967 establishes the terms and conditions for application of the Act of 6 June 1962. Act No. 67-020 of 15 November 1967 confirms Madagascar's accession to the Geneva Convention relating to the Status of Refugees, dated 28 June 1951.

(c) Ordinance No. 77-053 of 16 September 1977 halts any transfer of property by foreigners in the case of rural properties 20 ha or more in size.

80. Members of the Committee, referring to the provisions of title II of the Constitution (Fundamental rights and duties) wondered whether some provisions might not constitute general restrictions on rights guaranteed by the Covenant.

81. First of all, it should be noted that the Covenant itself establishes in article 1 that "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

82. Moreover, the Constitution dates back to 1975 and has not been changed in any way. However, protection of the prerogatives and freedoms set forth in the Covenant has not only been ensured but has also been strengthened. The Constitution itself establishes in article 117 that "Legislative provisions derogating from the ordinary law and adopted by virtue of states of emergency (martial law, state of necessity) proclaimed since 13 May 1972 are automatically repealed once the new State institutions are established". Eighteen months after the entry into force of the Constitution, the main institutions were established, decentralization fully ensured the participation of individuals in public affairs; and the establishment of a People's National Assembly elected by universal suffrage meant that legislative power was in the hands of the people. The Constitutional High Court was set up, and the powers of the Supreme Court, as the highest court of the land, responsible for monitoring justice, were strengthened.

83. The way these institutions function will be examined in depth throughout this report, but the members of the Committee may be assured that there is no reason for concern now that 13 years have elapsed since the 1975 Constitution was put into effect.

84. Again, protection of the freedoms and prerogatives set forth in the Covenant is effective because State bodies have been established, but it has also been strengthened by a number of steps already mentioned, such as:

(a) The establishment of the Constitutional High Court, and more particularly the operativeness of a plea for unconstitutionality;

(b) The introduction in 1985 of monitoring by the Supreme Court, a matter which will be discussed later in connection with article 14 of the Covenant.

85. Like a number of developing countries, Madagascar has had to cope with social and economic difficulties and has had to maintain a minimum number of emergency measures. Generally speaking, however, it can be said that, since the initial report was submitted in 1978, major advances have been made in genuine implementation of paragraphs (a), (b) and (c) of article 2.

Article 3

86. When the initial report was submitted, it was said that men and women were equal in law, as a result of many legislative provisions - provisions to which it does not seem necessary to revert. However, some comments are called for in regard to implementation of these provisions. Moreover, other

legislation has been implemented to ensure equality between men and women in exercising civil and political rights.

87. First of all, major legislation has been enacted since the initial report was submitted:

(a) Act No. 79-014 of 15 July 1979, containing the regulations on public servants. Article 6 of the Act stipulates that there is "no discrimination between public servants on the grounds of sex";

(b) Act No. 79-027 of 15 October 1979, containing the regulations on the judiciary. Article 79 of the Act prescribes that the provisions on the general regulations for public servants are applicable to the judiciary. However, article 81 stipulates that "in view of the special constraints in performing the duties of a judge or magistrate (travel, circuit duties, physical constraints), access to posts may be subject to special limitations". Actually, a compensation system had been established under previous legislation. It has now been repealed and members of the judiciary are recruited on an equal footing. In 1988, 124 judges were women, and 178 were men. Obviously, the authorities bear in mind certain physical constraints, not in recruitment or in slowing down advancement, but in ensuring suitable posting;

(c) Act No. 78-040 of 17 July 1978 on the overall framework for the education and training system. This basic legislation is of special importance in that it constitutes the continuing framework for the education system, regardless of any needs for restructuration or change. No provision stipulates any discrimination against women. Moreover, women are subject to national service obligations, under conditions that are in keeping with their physical constitution. Some provisions of the Act use the word "man" (for example article 1, which states "The education and training system for all men ..."), but the expression obviously covers men and women. The Act and the regulations on national service establish that, after training together, boys and girls are assigned to education or to work in economic and social development.

88. It is important to point out that the People's National Assembly has authorized ratification of the Convention on the Elimination of All Forms of Discrimination against Women (1989).

89. As to the exercise of political rights, it should be noted that article 1 of the Organization Act No. 3 states that: "All Malagasy citizens, regardless of sex, who are 18 years of age on the date of the ballot, are entitled to vote. All Malagasy citizens, regardless of sex, who are 21 years of age on the final date for submitting candidatures, are eligible to stand for election". In the case of elections held since the initial report was submitted, provisions for implementation were adopted in 1982 and adapted the terms and conditions of the vote to the existence of the decentralized communities; none of these regulations draws any distinction whatsoever on the grounds of sex.

90. A number of elections were held in 1983 and 1989 and form the subject of laws and regulations enacted and issued since the initial report to the Committee. None of the provisions establishes any discrimination. The following legislation should be mentioned:

(a) Ordinance No. 82-016 of 6 May 1982, on exercise of the right to vote, which states in article 1 that "All Malagasy citizens, regardless of sex ... are entitled to vote".

(b) Decree No. 82-51 of 27 May 1982 on electors' cards;

(c) Act No. 82-020 of 24 June 1982 on elections for the presidency.

Effectiveness of laws and regulations

91. Since the initial report was submitted, women in Madagascar continue to play an increasingly broad social and political role and to carry greater weight in both the public and the private sector. There are many reasons for this.

92. First, any possible de facto discrimination in the political field is eliminated as women play a real part in political and social life, both in the large towns and cities and in the countryside. In 1983, the number of women in holding elective office, and hence bearing responsibilities in the decentralized communities, was as follows:

Faritany	Number
Antananarivo	1 113
Fianarantsoa	255
Antsiranana	127
Toamasina	392
Mahajanga	103
Toliary	88

93. Second, womens' organizations have often contended that Malagasy legislation giving women the same civil rights as men is more than adequate but implementation runs into residual discrimination that is a hangover of tradition. Substantial efforts have been made to overcome this de facto discrimination and they draw on the fact that the "Charter-Constitution bloc", while confirming that there must be no discrimination, makes women one of the pillars of the Revolution.

94. The result has been greater awareness, with genuine effects on, for example, the provisions of Ordinance No. 62-041 of 19 September 1962, whereby every citizen of Madagascar, regardless of sex, is entitled to exercise his civil rights (art. 14 of Ordinance); the Ordinance of 1 October 1962, on marriage, which establishes in article 56 that marriage does not affect legal capacity; the Act of 20 November 1963, whereby minors (men or women) have full legal capacity if they marry (art. 107); and the various provisions of Act No. 67-030 of 18 December 1967, whereby a woman can administer the household in the event of her husband's death. These provisions are sufficiently important for this report to revert to them later in discussing progress in legislation on the family (art. 23 of the Covenant).

95. Third, the economic and social situation is such that women have naturally tried to find a second source of income for the household, either by looking for a job in keeping with their qualifications or by setting up small

businesses on their own (trade, handicrafts and so on), or again by taking part in managing a family firm. Admittedly, this is not an entirely new situation, but it has become much more common in the last 10 years. It has, among other things, given full weight to the judicial interpretation of the right of a woman to engage in an occupation independently of the occupation of her husband. Under article 4 of the Code of Commerce, still applicable in Madagascar, a husband could possibly make a formal objection. However, since the Code dates back to 1895, the Ordinance on marriage does not affect the spouses' legal capacity, and the concept of the husband as "head of the family", maintained in Malagasy positive civil law, does not allow a husband to object to the fact that his wife has an independent occupation.

96. Fourth, it would seem useful to revert to the role of the Constitutional High Court. It has already been mentioned in part I of this report (para. 29) that a decision of principle, Decision No. 005-HCCD of 19 February 1985, specified that monitoring of constitutionality goes so far as censuring "all acts likely to affect the fundamental rights and freedoms guaranteed by the Constitution ...".

97. From this standpoint, mention should be made of Decision No. 030-HCC/D of 20 December 1979, concerning a request to cancel a competitive examination for the recruitment of clerks/bookkeepers in which women candidates had participated and had been hindererd by article 5, paragraph 2, of Decree No. 66-174 of 30 March 1966, which stipulates that: "In view of the special physical conditions required of clerk/bookkeepers, employment is reserved for male candidates at least 1.60 metres tall".

98. The Constitutional High Court, after referring to the provisions of article 12 of 1975 Constitution ("The State guarantees the equality of all citizens ...") and those of article 26 ("access to public duties, profession and employment is open to all citizens, the sole conditions being ability and aptitude") took the view that the provisions in question were inconsistent with the Constitution. This decision was not simply regarded as application of the procedure of the plea of unconstitutionality. It was also viewed as a major positive step in the full implementation of the rules on no discrimination towards women, more particularly since the provisions of the Decree in question had been designed to protect women against a posting to a prison establishment where administration of the establishment might entail dangers.

Article 4

99. This article, which deals with emergency situations requiring appropriate measures of public order, has already been discussed in the initial report and amplified in subsequent communications.

100. Measures of this kind were taken between 1972 and 1975, a time of disturbances that preceded a change of régime and the introduction of the institutions of the Second Republic, with the implementation of the Constitution of 31 December 1975; the Constitution is still in effect and, when this report was being prepared, had not been amended in any way.

101. Because of their importance, it has been thought desirable to recall the information already furnished and the circumstances that led to the maintenance of certain exceptional measures.

102. Article 117 of the Malagasy Constitution stipulates that the legislative measures derogating from ordinary law taken under states of emergency proclaimed since 13 May 1972 (in particular the state of national necessity) were automatically repealed with the introduction of the new State institutions (art. 18 of the Constitution). Since that time, the Malagasy State has lived under a régime subject to the rule of law, and there are no emergency measures expressly laid down to meet the circumstances. No provision contains discrimination of any kind. No measure envisages derogation from articles 6, 7, 8, 11, 15, 16 and 18 of the Covenant. The legislation transmitted to the Human Rights Committee is that of ordinary law since all the emergency measures have been repealed.

103. However, in order to protect society and to maintain public order at all times, the Constitution has provided that exceptional measures may be taken in the event of emergency and disturbances. Article 56 of the Constitution provides that a state of emergency or a state of necessity proclaimed in conformity with the Constitution allows legislation to be enacted in the form of ordinances countersigned by the members of the Supreme Council of the Revolution. However, the legislature has envisaged a procedure to ensure that such proclamations are really justified; a state of emergency or a state of necessity is proclaimed in the Council of Ministers following an opinion delivered by the Constitutional High Court. The proclamation (state of emergency, state of necessity or national law) is made by the President of the Republic and, when circumstances so require or for the defence of Madagascar, public order and State security (art. 62 of the Constitution). Since the initial report was drawn up, there has never been recourse to these provisions.

104. Although emergency circumstances have at no time given cause for recourse to these provisions of the Constitution, the seriousness of the economic crisis led at certain periods to temporary violence, an increase in crime and localized social disorders which made it necessary for the Malagasy legislature to maintain the special courts referred to on several occasions, namely:

(a) The Special Criminal Court established under Ordinance No. 77-068 of 30 September 1977 to combat acts of crime. They are circuit courts and consist of a presiding professional judge and six co-magistrates appointed from among the members of people's councils;

(b) The Special Economic Court established under Ordinance No. 76-019 of 24 May 1976 with special responsibility for punishing economic offences or offences affecting economic public order;

(c) The Special Criminal Court to combat cattle theft, which is an extremely serious problem in Madagascar, and its establishment dates back to Ordinance No. 60-106 of 27 September 1960.

105. It has already been noted that, despite the exceptional character of the procedure applied in these courts, there is no infringement of the right to apply to Supreme Court for a judicial review. A defendant is always presumed innocent until his guilt has been proved and the provisions concerning the rights of defence are respected. Generally speaking, the Code of Penal Procedure for ordinary law is applied when the emergency provisions do not envisage a special procedure, and all the special courts are supervised by the monitoring machinery of the Supreme Court mentioned in connection with the commentary on article 14 of the Covenant.

106. For some years, the authorities have had to attend to the problem of security in rural areas. The decline in social discipline, the insufficient material resources available to the law enforcement authorities outside the major urban centres and the social consequences of the economic crisis have given rise to two kinds of phenomenon:

(a) The climate of insecurity has had a marked effect on some regions, not so much in regard to people as to property (the theft of crops, the unlimited felling of trees, the theft of animals, raids on villages, etc.);

(b) The fear felt by the population for their property and for their lives gave way to defensive acts that were admittedly similar to self-defence, but were illegal because of the violence and the rough justice, sometimes including executions, independently of the State's law enforcement and judicial authorities.

107. The legislature quickly took steps which, without discouraging the peasants and in particular the inhabitants of unsafe areas, brought the unlawful violence to an end, and at the same time carried out security measures in which the population and the law enforcement authorities were associated. These measures are extremely varied, but are co-ordinated by the authorities and are known as "integrated security". The courts of ordinary law and the law enforcement authorities retain their prerogatives and in no case are the judiciary, the judicial police and the forces that exercise the powers of judicial or administrative police divested of their usual powers.

108. Further, in rural areas where a constant climate of insecurity prevails, local security committees have been established under the auspices of the chairmen of the decentralized communities. These committees are assigned the task of enlisting the support of the population for the purpose of self-defence and co-operating with the law enforcement authorities. Local security committees have been set up mainly in the decentralized communities by regulations (issued in December 1987 in the Fokotany and Firaisana, decentralized communities of the Faritany of Antananarivo). Their job is to co-operate with the national gendarmerie and to enlist the support of the population, not for the purpose of violence but for self-defence against crime, and handing over persons responsible for offences and criminal acts to the law enforcement authorities. The idea, therefore, is not to establish a people's justice but to enrol the population in active participation in their own safety by closely co-operating, within the context of the law, with the law enforcement authorities.

109. Further, under Decree No. 84-056 of 8 February 1984 agencies were established at the national level and at the level of the decentralized communities, with the aim in the context of existing laws and regulations, of protecting public safety and public, economic and social order, in strict respect for the law. These agencies, which are called joint planning and operational joint staff agencies are made up of the elected authorities, the judicial authorities, military authorities, the gendarmerie and the police authorities, which co-ordinate their work in the defence of public safety. One of the original features of these institutions is that each authority and each institution maintains its own prerogatives but plays a part in co-ordinating activities, from the top of the hierachy to the most modest decentralized community, so that the population, while making its contribution, is conscious of working in a more reassuring context.

110. Since these measures are still relatively recent, it is not yet possible to assess how effective they are, but they should have the two-fold advantage of drawing the various authorities closer together and also of bringing the population and the authorities together, while preserving respect for fundamental rights, including those spelled out in the Covenant.

Article 5

111. Because of its general character, article 5 overlaps with many of the articles in the Covenant which have already been commented on. Thanks to a stable legislation, the rights and freedoms in the Covenant have always been protected and have not been subjected to restriction or derogation on the pretext that the Covenant did not recognize such regulations and customs. It should also be borne in mind that Madagascar has acceded not only to the Covenant but also to the Protocol thereto.

Article 6

112. The relevant passages of the initial report continue to be fully valid and there has been no new basic legislative provision that has changed the position taken by the Malagasy legislature. Also, article 6 does not confine itself to the problem of the death penalty alone. It should be extended to address the right to life.

113. From this standpoint, it can be seen that the right to life is an integral part of Malagasy culture and tradition. The provision in article 42 of the Constituion which specifies that every citizen is guaranteed the inviolability of his person remains unchanged. Furthermore, the progress achieved by the Malagasy Government in combating disease-related mortality, and particularly infant mortality, is significant.

114. The position of the Malagasy Government on the death penalty is unchanged. Between 1977 and 1987, the ordinary criminal courts pronounced 14 death sentences and the special criminal courts pronounced 37 death sentences. These verdicts were in conformity with the appropriate procedure, which has already been described. In no way has there been any arbitrary deprivation of life.

115. The initial report and the present report, have on several occasions referred to the increase in crime and violence in rural areas and the adverse consequences of the economic crisis. In these circumstances, the abolition of the death penalty is not being contemplated. Moreover, the death penalty continues to act as a deterrent, as no death sentence has been carried out since 1977. Genocide is virtually unknown.

116. The only two difficulties with which the Malagasy authorities have had to contend in regard to the right to life are:

(a) Violent reactions among the people against acts of crime in rural areas and sometimes even in urban centres referred to at some length in this report, mainly in connection with article 4. In addition, in some regions where the lack of security was becoming intolerable, it was informally agreed, without the approval of the authorities, that persons resonsible for crimes, and even for stealing crops, should be put to death. The Malagasy authorities reacted immediately to terminate these customary agreements, which were

incompatible with the provisions of the Covenant and with penal procedure under ordinary law;

(b) The initial report had already alluded to self-defence, but in view of the questions put by the Human Rights Committee, it should be recalled that article 327 of the Malagasy Penal Code states that "there is neither crime nor offence when the homicide ... is ordered by law or commanded by the lawful authority". Further, article 328 states "that there is neither crime nor offence when the homicide was necessitated by legitimate self-defence or the defence of others".

117. In view of the climate of insecurity, particularly in rural areas, in recent years, the legislature has amended article 329 of the Penal Code, and the new and complete version introduced by Act No. 78-039 of 13 July 1978 is given below:

"Article 329. (Act No. 78-039 of 13 July 1978). The following three cases are included as cases of legitimate self-defence:

1. If the blows were struck, if the wounds were inflicted, if the homicide was committed while repelling during the night a break-in or breach of the fences, walls or entrance to a house or an apartment or their outbuildings, a shop, a warehouse, a religious building, a school, a hospital, an office, a factory, a bank, commercial premises, a cattle pen, a stable, a pigsty or a poultry yard, while preventing theft in the fields of crops or other produce of the earth, already removed from the soil, or of stacks of grain forming part of the crops;

2. If the blows were struck, if the wounds were inflicted, if the homicide was committed while repelling during the day any housebreaking, robbery with violence, attack or robbery by a gang or any robbery in which weapons were seen to be carried;

3. If the blows were struck, if the wounds were inflicted, if the homicide was committed against wrongdoers at the time of the events or in the course of their pursuit by members of the Fokonolona or law enforcement officials, while defending themselves against persons engaged in theft or pillage or any other criminal act, carried out with violence, or in a gang or with weapons that were visible or concealed, no distinction being drawn in this case between weapons and instruments customarily described as weapons, or an act carried out by using a motor vehicle".

Article 7

118. Article 7 covers two different problems: cruel and inhuman treatment, and medical or scientific experimentation.

119. In connection with the prohibition against torture and cruel and inhuman or degrading treatment or punishment, there have been no new developments or provisions since the initial report. Article 42, paragraphs 1 and 2, of the 1975 Constitution, which have not changed, reaffirm the right of every citizen to social dignity and inviolability of the person.

120. There is a two-fold control over the authorities in charge of the inquiries which are usually conducted by the judicial police or authorities having the same prerogatives (judicial police, gendarmerie, officials of the Department of Public Prosecutions, etc.):

(a) Monitoring by the judiciary: the Department of Public Prosecutions ensures that in all proceedings, inquiries are conducted with respect for the individual. The members of the Department are subject to the principle of judicial rank;

(b) Monitoring by immediate supervisors, either spontaneously or on complaint by the victim: penalties are specified, involving a disciplinary side to them - the most serious being temporary suspension of duties, demotion, automatic retirement and removal from office, which itself has variations, i.e. elimination of pension rights, unfitness for any further participation in public service (art. 43 of Act No. 79-014 of 16 July 1979, containing the general statutes for public servants, amended by Act No. 88-027 of 16 December 1988).

121. The provisions of the Penal Code also contain special penalties for persons holding prerogatives belonging to the authorities. The use of violence towards persons in the performance of duties, without legitimate grounds, by a public official, administrator, Government or police officer or employee, a person enforcing a judicial warrant or judgement or commander-in-chief or a subordinate in the armed forces, is subject to criminal penalties, depending on the nature and seriousness of the violence committed, and the sentence is increased in accordance with the rules laid down in the Penal Code (Penal Code, arts. 186 and 198).

122. In addition, articles 303 and 309 et seq. of the Penal Code lay down severe penalties for individuals responsible for torture, acts of cruelty, blows, violence, assault or ill-treatment towards a child. For example, under article 303 of the Penal Code, murder is deemed to be murder committed with aggravating circumstances in the case of any individual who resorts to torture or commits acts of cruelty in the course of the crime. The penalty is the death sentence.

123. Article 312, paragraph 6, of the Penal Code lays down a prison term of five years, together with a fine, for anyone who deliberately injures or beats a child under 15 years of age, deliberately deprives the child of food or care to the point of jeopardizing his health, or commits any acts of violence or assault against him. Medical or scientific experimentation without the patient's consent has always been prohibited by criminal law and the rules of scientific and medical ethics.

Article 8

124. Article 8 of the Covenant deals with two series of problems:

(a) The first concerns slavery, the slave-trade and holding persons in servitude. These problems are now part of history and are no longer of any interest in Madagascar.

(b) The second series of problems, on the other hand, give rise to an ongoing discussion of the definition of forced or compulsory labour.

125. First of all, it should be pointed out that, in 1980, the Democratic Republic of Madagascar ratified ILO Convention (No. 29) concerning Forced Labour. Furthermore, article 8 of the Covenant does not relate to sentences of hard labour issued by the competent courts. Paragraph (c) (iv) does not regard as forced or compulsory labour any work or service which forms part of normal civil obligations.

126. It is in the light of these explanations and with ongoing consideration for the duties of citizens in developing countries that we must interpret certain civil obligations, laid down in articles 19, 20 and 21 of the 1975 Constitution, relating to compulsory national service, the requirements of national defence, the contribution to economic development, the definition of work as an honour and the compelling duty of every citizen who must voluntarily accept its discipline (art. 21 of the Constitution).

127. As to the national service, the general principles of which are laid down in Ordinances Nos. 78-002 and 78-003 of 3 February 1978, young men and women who are under the obligation to perform national service for one year undergo compulsory military training in the early months of service and engage in the last months in work in keeping with their skills and abilities. In no way does this work have the compulsory nature of forced labour; a significant portion of the recruits are assigned to administrations where they assist public officials, but most are assigned to primary schools as teachers after receiving teacher training.

128. National service recruits are therefore given work that is not purely military in nature but relates to economic and social development. But in view of their level (many have their high school diploma or a high level of education), generally the work is technical or involves supervisory responsibilities. This work is undeniably compulsory, but the experience of the competent authorities since national service was established has shown that the work assigned to the recruits helps to make them more mature, to familiarize them with the actual situation in their country and, if necessary, to guide them in a career. Finally, it should be pointed out that persons who would normally be required to perform national service but who work in a firm are considered to be performing or to have already performed national service.

129. With regard to work by prisoners whose sentence does not involve forced labour, these prisoners may be assigned to work under State control or transferred elsewhere and can be assigned to a prison camp for agricultural work. With the close co-operation of the ministry in charge of agricultural production, the Prison Administration places the emphasis on food crops and small stock-raising in the "toby fiarenana" (social rehabilitation centres). However, accused persons and persons considered to be convicted as political prisoners are not assigned to these centres or to prison villages.

130. In 1988, there were 290 production units supervised by 338 officials, for 5,472 prisoners working 14,340 hectares throughout the country. At 31 December 1985, the prisoners numbered 23,618, of which 9,008 were convicted prisoners and 14,610 untried prisoners. It should be mentioned that, although the work required of prisoners may be analysed as being forced and compulsory labour, it concerns only a minority of prisoners, and most importantly, the prisoners are either volunteers or individuals chosen because of their good behaviour - since life in rehabilitation centres and prison villages is more bearable, at least for people from the countryside.

131. Lastly, since the decentralized communities were established, work of local interest (reafforestation, minor road repair) is assigned to the inhabitants of the communities themselves, not on the basis of compulsory labour but of collective conventions, or "dina", concluded among the inhabitants of a single community. Moreover, the "dina" do not exclude volunteers, in particular when disasters occur or large-scale works are needed urgently.

Article 9

132. There have been no new provisions in the laws protecting the right to liberty and security of the person since the initial report. Article 42, paragraph 4, of the Constitution still stipulates that "no one may be arrested or detained except in cases determined by the law and in the forms the law has prescribed". The provisions of the Penal Code relating to violation of liberty have not been altered. Any arbitrary act or violation of individual liberty is punishable by loss of civil rights. Since the matter was raised during the discussion of the initial report, it should be mentioned that the penalty of loss of civil rights is defined in article 34 of the Malagasy Penal Code and includes dismissal and the exclusion of the convicted persons from any public duties or posts, removal of civil and political rights and a ban on performing certain duties.

133. Articles 114 to 122 of the Penal Code establish penalties applicable to public authorities which have ordered or performed an arbitrary act or act that violates the individual liberty or civil rights of one or more citizens. In addition, the provisions of the Malagasy Penal Code, which remain unchanged, lay down penalties for anyone who carries out an illegal arrest or kidnapping (arts. 341 to 344 of the Penal Code). The reader is also referred to the articles relating to pre-trial detention (arts. 136 and 334 of the Penal Code).

134. It would perhaps be inaccurate to speak of progress, if article 9, paragraph 3, of the Covenant is studied in the light of the figures for the number of persons held pending trial and the provisions of articles 334 et seq. of the Malagasy Penal Code. But it must also be realized that the judiciary and the police do not have sufficient staff and facilities to meet the growth in the population and the corresponding increase in crime. This is one of the constant concerns of the Malagasy authorities and more particularly the Ministry of Justice.

135. The following are the statistics for 1978 to 1983:

Persons held pending trial

1978: 17,777 of 55,801 new cases, or 31.82 per cent

1979: 14,614 of 46,929 new cases, or 31.14 per cent

1980: 13,508 of 43,210 new cases, or 31.26 per cent

1981: 16,492 of 41,131 new cases, or 40.09 per cent

1982: 15,421 of 46,691 new cases, or 33.02 per cent

1983: 19,938 of 47,007 new cases, or 42.41 per cent

Persons released on bail

1978: 1,628

1979: 1,668

1980: 2,078

1981: 1,597

1982: 1,839

1983: 2,471

The above period was chosen because it coincides with an economic and social crisis: it will be noticed that there was a sudden increase in the number of persons detained pending trial but also an increase in the number of persons released on bail.

Article 10

136. This article relates more particularly to the fate of prisoners. The laws governing the situation of prisoners meet the concerns of the Covenant.

137. Under Decree No. 59-121 of 27 October 1959, setting forth the general organization of the prison services in Madagascar, it is prohibited for any prison staff to assault prisoners or use insulting or crude language when speaking to them (art. 28). There are special quarters for male prisoners, for women and for children. Regulations have been issued for the prisoners' social rehabilitation. Political prisoners have a special status exempting them, in particular, from physical work, with the exception of maintenance and cleaning chores in the premises they occupy. Efforts are also made for the prisoners' social rehabilitation, in particular through penitentiary villages and the possibility for the prisoners to do craftwork.

138. But the main problem is still that the resources available to the Prison Administration, in terms of manpower, buildings and facilities are incommensurate with the growing number of prisoners, who average 23,000. In some prisons, such as those in the major urban centres, the situation is practically explosive. Current efforts are aimed at improving prison food and at putting up new buildings.

139. The initial report described the general organization of the Malagasy prison services. A simple reminder should be sufficient. Decree No. 59-121 of 27 October 1959 provides two penitentiaries for those convicted and sentenced to prison terms, six central prisons, one per Faritany (province), local prisons at the section courts, which house mostly indicted prisoners, convicted prisoners and untried prisoners, and maximum security prisons, which mostly house indicted and convicted prisoners or convicted prisoners in transit. Correctional and rehabilitational centres are being planned.

140. There is currently only one rehabilitation centre for minors, located near Antananarivo, and depending on the year it houses from 80 to 110 young people supervised by staff trained at the centres. There are also prison camps made of light-weight materials and intended for prisoners whose good

behaviour merits a reduction of sentence and for volunteers for certain tasks. Decree No. 71-210 of 27 April 1971 established an office relating to the "toby fiarenana" (rehabilitation camps), whose purpose is to promote the rehabilitation of convicted prisoners.

141. In 1987, there were 2 prison villages, 35 rehabilitation camps, 77 prison camps and 171 prison gardens attached to prisons. These 290 production units had 338 staff members for 5,472 prisoners, i.e. an average of 17 prisoners for each warder. These centres covered a total area of 14,340 hectares. Production consists chiefly of staple foods to supplement prison food.

142. Moreover, efforts have been made to include other ministerial departments in the endeavours of the Ministry of Justice to secure social reintegration and humane prison establishments, more particularly the Ministry of Health and the Ministry of Agriculture (circulars issued between 1980 and 1983 on hospitalization of prison inmates and assistance from the Ministry of Agriculture for technical training of prisoners assigned to prison farm production units).

143. But the most serious problem is still prison overcrowding and, consequently, the fact that it is not possible to observe to the letter the rules set out in article 10 of the Covenant, rules which are nonetheless set out in the legislation on prison organization. It should be borne in mind that, for an average population that should be not more than a third in each prison establishment, the figures for a given period (1980-1985) point to a very difficult situation:

In 1980, the total number in custody stood at 22,968, including 9,712 convicted persons and 12,352 accused persons. The convicted consisted of 9,524 men, 162 women and 24 juveniles. The accused persons consisted of 12,596 men, 308 women and 352 minors;

In 1981, the figures did not change greatly, the total standing at 22,271;

In 1982, the total was 22,477;

In 1983, it was 22,821;

In 1984, it was 21,501;

In 1985, the total stood at 23,618, including 9,008 convicted persons and 14,610 accused persons. The convicted persons included 177 women and 61 juveniles, and the accused persons included 400 women and 925 juveniles.

144. After 1986, the figures rose, but fluctuated a great deal, so that there are three constant features in the present situation:

The total number of inmates stands at around 23,000, the number of women ranges from 500 to 700, and the number of juveniles ranges from 60 to 350 if no distinction is drawn between convicted and accused persons;

The number of accused juveniles is abnormally high, particularly in the case of boys;

The total number of accused persons is always higher than the number of convicted persons.

145. The Prison Administration is making the necessary efforts to treat prisoners humanely and striving to place the largest possible number in production units, but it is not in a position fully to observe the provisions on separate treatment appropriate to convicted persons and accused persons, sometimes even young accused persons. Efforts are directed towards segregation of the sexes. Yet a great deal remains to be done.

146. It is gratifying that more and more national or international non-governmental organizations are engaged in placing juvenile accused persons or convicted persons with families or special centres. The State not only encourages such activities but also plays a part, under the conditions described below, by making a financial contribution to aid to children (see art. 24 of the Covenant).

Article 11

147. The initial report pointed out that, in accordance with the general principles of law and with Malagasy legislation, as a general rule there is no imprisonment for civil debts, as prohibited in article 11 of the Covenant. In other words, imprisonment merely on the ground of failure to fulfil a contractual obligation is prohibited.

148. This rule would pose no problem if the body of Malagasy law did not include three legislative provisions adopted in 1962 (in other words, before Madagascar's accession to the Covenant was approved). They are:

(a) Article 4 of Ordinance No. 62-063 of 27 September 1962, concerning farm credits;

(b) Article 17 of Ordinance No. 62-069 of 29 September 1962, concerning credits for co-operatives;

(c) Article 2 of Ordinance No. 62-113 of 1 October 1962, containing regulations on loans for the construction and purchase of movable and immovable property.

All three Ordinances stipulate enforcement by committal in the event of a borrower failing to repay the loan.

149. It should be noted that, in criminal matters, enforcement by committal is stipulated in articles 579 to 586 of the Malagasy Code of Penal Procedure. Article 583 regulates the system for providing food for persons undergoing imprisonment. Ordinance No. 76-018 of 20 May 1976 amended the provisions concerning food for the persons in question. Accordingly, legal doctrine has hesitated about the application of the Ordinances, some issued before and the third after, accession to the Covenant, thereby reopening the debate on the Covenant's true place in the Malagasy legal system.

150. This debate is too well known to be reintroduced here: the writings of jurists and judicial precedents have always shown that the provisions of article 11 of the Covenant have invalidated the Ordinances stipulating enforcement by committal in the case of contractual obligations. To clear up this matter, the problem was raised at a seminar of Malagasy judges and magistrates, held on 27 and 28 July 1988. Practical solutions were proposed

to eliminate enforcement by committal in contractual matters, and the Minister of Justice clearly stated in a note that the Covenant ranks higher than the law. Hence, there is no applicable provision that stipulates imprisonment in the case of a contractual obligation.

Article 12

151. Since articles 12 and 13 mention among other things the case of aliens, it is worthwhile to point to the legislation on the status of aliens that was mentioned in the initial report. Act No. 62-006 of 6 June 1962 concerns the organization and control of immigration and is supplemented by Decree No. 62-006 of 6 June 1962, whereby aliens are classed in three categories: non-immigrants, immigrants, and stateless persons and refugees. A bureau for refugees and stateless persons was established in the Ministry of the Interior under Decree No. 62-001 of 3 January 1962.

152. At the international level, Madagascar has acceded to the Geneva Convention relating to the Status of Refugees, dated 28 July 1951, and to the International Convention on the Elimination of All Forms of Racial Discrimination.

153. With reference more particularly to article 12 of the Covenant, any national or alien lawfully established on Malagasy territory has the right to liberty of movement and freedom to choose his residence. In particular, articles 18, 19, 20 and 21 of Ordinance No. 62-041 of 19 September 1962, already mentioned a number of times, are applicable. Article 20 provides that in Madagascar an alien enjoys the same rights as does a national, with the exception of the rights expressly denied by law. Article 21 provides that an alien may freely choose his residence only if he satisfies the obligations imposed by law on residence by aliens. Article 19 specifies that a national or an alien may be deprived of the exercise of his civil and family rights only by a court decision handed down under the conditions established by law.

154. The above-mentioned legislation on immigrants, non-immigrants, stateless persons or refugees clearly lays out provisions on freedom of movement, freedom to choose one's residence and the right to enter or leave the country. However, restrictions may be imposed when necessary to protect national security, public order and public health or morals. Madagascar is an island and, in view of its geographical position, any non-national passing through, if only in transit, might be involved in an incident as a result of a misunderstanding. Act No. 82-013 of 11 June 1982 stipulates imprisonment and a fine for any civil servant or public official who "on the grounds of a person's origin, colour, sex, family situation or the fact that the person belongs or does not belong, whether genuinely or supposedly, to an ethnic group, a nation, a race or a particular religion, knowingly denies him the benefit of a right to which he is entitled".

Article 13

155. The procedure for expelling an alien is set out in articles 24 to 27 of Decree No. 66-101, establishing the terms and conditions of application of Act No. 62-006 of 6 June 1962, on the organization and control of immigration. An alien who is under an expulsion order appears alone or assisted by counsel of his choice, before a commission in order to provide explanations. The commission may make any inquiries it deems appropriate.

156. Two remarks are called for in connection with expulsion, but they are also general in nature: expulsions are rare; and an expelled person could well maintain that he is of Malagasy nationality. Malagasy nationality is essentially a nationality of filiation, and persons of foreign origin could in fact have Malagasy ascendants. They might be of European origin, but above all from the Comoros, Mayotte, East Africa or Asia.

Article 14

157. Article 14 of the Covenant is of exceptional importance, for it is concerned with virtually all judicial activity. First, this is true of the principles: equality before the courts, a fair hearing, a competent, independent and impartial tribunal, basic principles of procedure such as in camera hearings, presumption of innocence, a guaranteed right to a defence, special procedure for juveniles, two-tier jurisdiction, new facts, and the principle of non bis in idem.

158. The initial report, together with the texts that were communicated, were enough to demonstrate, if indeed there was any need, that Malagasy legislation was ready to conform to the principles set out in article 14. The details supplied in 1978 and the texts in force at that time paint an adequate picture of Malagasy criminal procedure and of the efforts made through legislation to respect the provisions of the Covenant. Admittedly, nothing is perfect. As we have already acknowledged on a number of occasions, a minimum number of emergency measures have been maintained. However, a major effort has been made to ensure at least that existing vigilance is strengthened. Such vigilance is not hesitant and negative, it is enhanced by training of members of the judiciary.

159. Article 86 of the 1975 Constitution provides for training to keep a check on the activities of appeal and other courts. It is arranged under the terms of Act No. 77-001 of 22 December 1977 and Ordinance No. 82-019 of 11 August 1982. It is not in fact a new institution in the Supreme Court. Rather it is a new concept: professional judges are selected by the People's National Assembly and perform duties as judges of a court of cassation and as supervisory judges. Four chambers are involved: the Civil Chamber, the Social and Commerical Chamber and the First and Second Chambers for Criminal Affairs.
The four Chambers consist of 25 profe.ional judges, i.e. from the judiciary but selected by the People's National Assembly from a list drawn up by the Minister of Justice and transmitted by the President of the Republic to the People's National Assembly, made up of deputies elected by universal suffrage.

160. Malagasy legislation has therefore sought to meet two needs: the need for a watch on justice that will involve the representatives of the people, who elect the judges of the court of cassation and the supervisory judges, and the need to set at the pinnacle of the judicial system not citizens who are simply chosen by a political assembly but professional judges, who are placed on a list in accordance with criteria of competence, morality and experience. The supervisory judges, as a body, prepare an annual technical report which is considered both by the public authorities and by the People's National Assembly.

161. The supervisory body performs three kinds of duties. First of all, it performs the traditional duties assigned to a court of cassation. The statutes of the Supreme Court goes as far back as Act No. 61-013

of 19 July 1961 and establish in article 5 that an appeal for judicial review is made for a breach of the law ranked as a breach of customs and consisting more particularly of lack of jurisdiction, misapplication or mistaken interpretation, illegality, error of form, and breath of the authority of res judicata. The second duty, which calls for particular attention, is also one of cassation. Article 103 of the Act of 19 July 1961, containing the statutes of the Supreme Court, establishes that the Supreme Court's Prosecutor may, automatically or on the order of the Minister of Justice, and despite the expiry of the time-limits, file an application for judicial review in the interests of the law. In such cases, the Court rules without transfer to another court and its decision has no effect as between the parties.

162. Ordinance No. 82-019 introduces fundamental changes in above-mentioned articles 5 and 103, changes which call for an attentive perusal of articles 10 and 11 of the Ordinance:

> "Article 10. Notwithstanding the provisions of article 103 of Act No. 61-013 of 9 July 1961, if, in his letter ordering the Prosecutor of the Supreme Court to file an application for judicial review against a final ruling in a criminal case, the Minister of Justice asks for the decision to take effect with regard to the convicted person, the application shall be made to the supervisory judges and shall be heard by all Chambers sitting together. In the event of annulment, the supervisory judges shall rule on the merits, but shall not, by virtue of the decision annuled, be able to impose a heavier penalty on the convicted person or rule in detriment to the acquired rights of the claimant for criminal indemnification. The provisions of this article shall not apply if the application is based on the argument of a breach of the general precepts of justice as set forth in article 11 below.
>
> "Article 11. Except as provided for in article 5 of Act No. 61-013 of 19 July 1961, an action for judicial review in the interests of the law may be brought for a breach of the general precepts of justice and more particularly the equitable principles necessarily involved in the legal provision used as objective of justification for the ruling challenged. When such an argument is invoked, the application for judicial review shall be brought before all the supervisory judges and heard by all Chambers sitting together, and the decision shall be made in accordance with the emergency procedure. In the event of annulment, the supervisory judges shall rule on the merits and their decision shall take effect as between the parties. The applications referred to in this article and the previous article shall be made by the Supreme Court's Prosecutor on the orders of the Minister of Justice within a period of three months reckoning from the decision challenged. They shall be notified to all parties by the clerk of the Supreme Court."

163. These two articles, and particularly article 11, may lead to objections among the advocates of strict conventional justice, inasmuch as the provisions discussed in effect mean challenging a final judgement, in other words, a judgement not open to appeal and one which has already been the subject of a decision on cassation. Quite boldly, Malagasy legislation has sought to free itself of the apparent inconsistency between a decision handed down in accordance with the law but one which is inequitable and a decision which is removed from conventional rules but is in keeping with equity as viewed by the population concerned. Accordingly, it might well be asked whether the

prerogatives recognized in the Covenant and applied under particular social conditions suited to one kind of population or even one nation might not be questioned, as far as application is concerned, by legal decisions taken in the interests of the general principles of law and the principles of equity.

164. Examples of the decisions handed down by the Supreme Court are annexed to the report to enable the members of the Committee to appreciate the effort made by judges plainly trained to harmonize the law and equity, with respect for the provisions of the Covenant.

165. The third duty of the supervisory body is to keep a judicial administrative check on the courts of appeal and the other courts. This takes the form of inspection, investigation, verification or information assignments in connection with evidence or places. In fact, this checking is not new and has always been done by judges sent on inspection assignments by court presidents or even by the Ministry of Justice. What is new is that the monitoring has two sides to it.

166. First of all, the law enumerates a number of monitoring procedures (communication of files or of documents, compulsory preparation of a report indicating any defects, delays and flaws followed by identification of the causes and responsibilities, article 16 et seq. of Ordinance No. 82-019 of 11 August 1982). It should, however, be noted that the legislature takes the precaution of guarding against any infringement of the independence of the judge's decisions. The monitoring powers of the Supreme Court supplement the monitoring powers already wielded by the high court prosecutors, the First Presidents and the presidents of the courts.

167. Article 24 of the Ordinance adds, however, that the Prosecutor of the Supreme Court exercises general supervision over the activities of the Department of Public Prosecutions and of the judicial police throughout the territory of the Republic. In this way, the delicate exercise of the functions of the Department of Public Prosecutions and the judicial police are placed under triple supervision: that of the Prosecutor of the Supreme Court, the Prosecutor of the Court of Appeal and the usual authorities.

168. Further, this supervision is not simply a matter of routine, of tradition and, on occasion, designed to impose penalties. The judicial authorities are trying to strengthen the training-supervision linkage. Inexperienced judges are helped and supported. Errors due to lack of documentation or the excessive isolation of judges are corrected and remedial measures are sought to combat the lack of resources, shortcomings in documentation, distance and isolation.

169. The main obstacles encountered by the judicial authorities and the judicial police are the enormous material difficulties with which they have to cope. As far as the international agencies responsible for development aid are concerned, priorities in the developing countries and elsewhere are assigned to what is regarded as essential, namely, food, health and economic development. But is the protection of the prerogatives and rights established by the Covenant not just as essential? Proper justice can be dispensed only if there is a minimum amount of resources and a climate that protects the independence of the judge.

170. Hence the conclusion to be drawn, with respect to article 14 of the Covenant, is that, despite all the difficulties they encounter, judges and the judicial police have always endeavoured to be the most active advocates of the Covenant. It is true that special measures have been retained, but they consist solely of the special courts (special criminal courts, special economic courts and special criminal tribunals, as well as exceptional restricted residence measures which are virtually never adopted). The courts which are still operational continue to be monitored exclusively by the supervisory body and the judicial authorities.

171. When the initial report was submitted, the Committee drew attention to the following considerations: the presumption of innocence, the right of everyone to a fair and public hearing by an independent and impartial tribunal, and the guarantees for the defence (art. 14 of the Covenant).

(a) Presumption of innocence

The principle stems from provisions of:

The Constitution of 31 December 1975, in article 42, paragraph 4;

The Code of Penal Procedure, in articles 429 and 251 (the rights of both prosecution and defence, the judge's obligation not to indicate his opinion as to guilt).

(b) The right of everyone to a fair and public hearing by an independent and impartial tribunal

The principle is formally recognized by the Constitution of 31 December 1975, in articles 72 and 83, paragraphs 2 and 3.

(c) Guarantees for the defence

The principle is established by:

The Constitution of 31 December 1975, in article 42, paragraph 8;

The Code of Penal Procedure, in articles 54, 55 et seq..

(d) Judgement without undue delay

172. When the initial report was submitted it was stated that every effort was made to ensure that accused persons were judged without undue delay. However, it must be borne in mind that the tremendous material difficulties that beset the courts affect the holding of trials; the figures, rather than descriptions of the material circumstances of the courts, speak for themselves. In the field of judicial administration, the courts and Public Prosecutor's Offices were giving way under the weight of cases that were pending. Thus, on 21 December 1988:

Public Prosecutor's Offices 20,857

Courts and sections:

Civil cases 14,800

Criminal cases 9,645

Court of Appeal:

Civil cases 6,471

Criminal cases 2,594

Supreme Court:

Supervisory body 1,203

Adminstrative Division 0

Special Economic Court 542

At 31 December 1989

Supreme Court:

Supervisory body

(Former Court of Cassation) 1,419

Administrative Division and

Court of Audit 490

Court of Appeal:

Civil cases 9,715

Court of First Instance of Antananarivo:

Public Prosector's Offices ..... 23,444 (compared with 10,387 in 1988)

Court headquarters:

Civil cases 7,299

Criminal cases 23,019

173. Despite the numerous obstacles, however, Madagascar, like all developing countries that are compelled to give priority to economic progress, is striving to maintain an equitable system of justice and social peace such as befits a State governed by the rule of law. The following measures are ongoing or planned for the near future:

(a) An increase in the number of judges, but without losing sight of the quality of their training. To become a judge it is necessary to have a degree in law, the diploma of advanced studies awarded by the Institute of Legal Studies (IEJ) and to sit a professional competitive examination. A parallel system of recruitment is envisaged, but only for a small number of qualified lawyers;

(b) An increase in the number of courts; over the last eight years at least four courts of first instance have been set up, courts that had been closed have been reopened and a court of appeal will be established shortly in the southern part of Madagascar, at Fianarantsoa;

(c) Exceptional appropriations have been set aside for the renovation of penal establishments;

(d) A new organization is being set up to increase the number of what are known as audiences foraines, namely, hearings held in certain areas far from the ordinary courts and which are visited periodically by the members of the court which has jurisdiction for that area. This initiative is not new. The idea is to increase the number of the hearings in an effort to achieve decentralization and bring justice and the citizen closer. The effort that has to be deployed in logistics (travel by already overworked judges, providing vehicles, security of the judge, etc.) may well be imagined;

(e) Various draft laws are under consideration with a view to simplifying certain procedures without, however, giving way to the temptation to over-simplify, which is a source of arbitrary conduct and error.

Article 15

174. Article 15 of the Covenant does not call for special attention, as it uses other terms to formulate both a fundamental rule of criminal law and procedure established by the basic legislation already referred to in the initial report and a general principle of law. Article 42 of the Malagasy Constitution, whose stability has been emphasized repeatedly says that "No one may be prosecuted, arrested or detained save in the cases determined by the law and in accordance with the procedures which it prescribes" and that "No one may be punished save by virtue of a law promulgated and published before the commission of the offence". Article 4 of the Malagasy Penal Code prescribes that "No petty offence, serious offence or crime shall be subject to any penalty which was not prescribed by law before the offence was committed".

Article 16

175. Everyone's right to recognition as a person before the law has traditionally been a foundation of Malagasy law. It was reaffirmed by Ordinance No. 62-041 of 19 September 1962, relating to the general provisions of internal law and private international law. This is a fundamental ordinance frequently referred to in the initial report as well as in this report.

176. There are, however, two points. On one hand, the right to recognition of legal personality stems not only from the influence of modern law but also from the religious and traditional foundations of Malagasy law, and it has never given rise to debate: it forms part of the fundamental rules dating back to the sources of Malagasy civilization. However, this natural law has led jurists to ascribe little importance to the evolution that has taken place in the exploration and refinement of the concept of recognition of legal personality in modern doctrine. Thus, the concepts of the right to physical integrity, the right to moral integrity and the right to work have been reaffirmed and strengthened only in recent years. The provisions of articles 16 to 19 of the Ordinance of 19 September 1962, which are therefore 28 years old, are now coming into their own.

177. The distinction between civil rights and political rights is clearer as the state of law is consolidated and citizens become increasingly aware of their duty to play their role in civil society and in the everyday running of the institutions of the Republic, as well as of their existence as persons before the law.

178. Greater interest is being shown in the problems of the protection of physical integrity. Studies have been devoted to article 17 of the Ordinance, which for long had seemed unusual: "The rights of personality are inalienable. Any voluntary limitation on the exercise of such rights shall be null and void if it is contrary to public order". Remedies, although still timid, are filed on the basis of article 18: "Any unlawful attack on personality shall entitle the victim to demand that it should be stopped, without prejudice to such liability as may be incurred by the perpetrator".

179. The moral rights of responsibility are assuming increasing importance: intellectual integrity, credit, name, image, intellectual property (for example more effective methods of protecting artistic and literary property, whereas the legislative provisions concerning such protection have applied in Madagascar since 1957).

180. This greater awareness is not only due to advances in legal expertise and in education. It has also been encouraged by the affirmation of general principles which give equal importance to respect for the objectives of the socialist revolution and the fulfilment of the human person (the development of every man and of man as a whole).

181. The difficulty of the differences in legal age should, however, be noted. Criminal law sets criminal majority at 18 years of age, civil majority is set at 21 years of age and political majority is set at 18 years of age. Marriage confers full legal capacity on any young married person. Finally, any minor may be emancipated in accordance with the procedure in the Act of 20 November 1963 relating, inter alia, to guardianship. Studies are currently being conducted in order to unify the rules concerning the legal age the disparities in which are due to the different dates on which the laws were implemented.

Article 17

182. Article 17 is a reaffirmation, in more detailed form, of everyone's right to recognition as a person before the law. The explanations given in connection with article 16 are therefore applicable to article 17, particularly in regard to citizens' awareness of their legal personality, in the same way as their awareness of their civic duties.

183. Article 42 of the Constitution of Madagascar reaffirms that "the inviolability of every citizen's person and home, as well as the confidentiality of his correspondence, is guaranteed". With regard to arbitrary or unlawful interference with his privacy, family or home, article 42 further stipulates that "no search may be carried out except as provided by law and in accordance with a written warrant issued by the competent judicial authority". Finally, attacks on honour and reputation are prohibited by Ordinance No. 74-014 of 21 March 1974, in which the Malagasy Press Charter was promulgated (arts. 52, 58, 60, 63, 64, paras. 2 and 3, 66, para. 3, and 67).

184. Attention is drawn to the following statistics, concerning the offences of libel and slander prosecuted in the various courts during the period under review:

1978: 1,411 offences leading to 535 convictions;

1979: 1,416 offences leading to 666 convictions;

1980: 1,139 offences leading to 530 convictions;

1981: 1,076 offences leading to 632 convictions;

1982: 1,656 offences leading to 486 convictions;

1983: 1,526 offences leading to 680 convictions.

185. The penalties for violations of the provisions of article 17 are prescribed in various articles of the Penal Code, which must be viewed in conjunction with those of the Code of Penal Procedure concerning arrests, illegal entry, encroachments on freedom, etc. For example, article 114 of the Penal Code stipulates that any public official or agent or servant of the Government who orders or commits any arbitrary act or any act infringing individual liberty or civic rights shall be liable to the penalty of demotion or dismissal from office. Article 184 of the Penal Code prescribes severe penalties for administrative or judicial officials, officers of justice, police officers or members of law-enforcement agencies who, acting in their official capacity, enter the home of a citizen against the latter's will except in the circumstances and in the manner prescribed by law. The same penalties apply to any person who enters the home of a citizen by means of deception, threats or violence.

186. Article 112 of the Code of Penal Procedure stipulates that failure to observe the formalities prescribed for summonses or arrest or detention warrants is punishable by a fine imposed on the issuing registrar by the President of the Indictment Division; it may also give rise to disciplinary action or to an appeal against judicial misconduct on the part of the examining magistrate or the government prosecutor who ordered its issuance.

187. With regard to violation of the confidentiality of correspondence, article 142 of the Penal Code prescribes heavy fines for persons who counterfeit or make unlawful use of any official seal, stamp or mark, who counterfeit official headed note-paper or printed matter or who counterfeit or falsify postage stamps, meter frankings or reply coupons issued by the Malagasy Postal Administration, or rubber stamps.

Article 144 of the Penal Code punishes the fabrication, sale, peddling, distribution, surcharging by any means, counterfeiting, imitation or alteration of various official items such as tax labels, stamps, banknotes or printed matter whose resemblance to the genuine articles would be likely to mislead the public.

188. However, it is principally article 187 of the Penal Code which prescribes penalties for officials or agents of the Government or the Postal Administration who withhold or open letters that have been posted. The penalties consist of a fine of FMG 25,000 to 150,000, together with a term of imprisonment of five months to three years and prohibition on holding any public office for a minimum of 5 and a maximum of 10 years. The same offences committed by any dishonest person, other than an official, entail a term of imprisonment of six days to one month and a fine of FMG 25,000 to 150,000.

189. Lastly, it should once again be noted that, under the provisions of article 18 of Ordinance No. 62-041 of 19 December 1962, "any unlawful attack on personality shall entitle the victim to demand its cessation, without prejudice to such liability as may be incurred by the perpetrators". Article 10 of Ordinance No. 62-041 may also constitute a means of defence against attacks on personality. Applying the theory of abuse of rights, this article stipulates that "any act or occurrence which, in the light of the intention of the perpetrator or the circumstances in which it takes place, manifestly exceeds the normal exercise of a right is not protected by law and may entail liability on the part of its perpetrator".

190. Although these provisions are known to the Committee, it was deemed advisable to draw attention to them yet again, since the authorities believe that individuals are becoming increasingly aware of their legal personality and that the concept of legal redress in the courts competent to protect personal rights has become more widely known to, and understood by, citizens. The reasons for this have been explained elsewhere in this report. Three of the reasons can be summed up as follows:

1. The development of civic education in the schools. Attention is drawn to the following extract from a recent text containing guidelines for character training and civic education:

> "Civics shall henceforth be taught in all secondary educational establishments, for the following reasons:
>
> (a) They give pupils an insight into:
>
> (i) The social and political organization of their country;
>
> (ii) The institutions of the Democratic Republic of Madagascar;
>
> (iii) The decentralized local communities, etc.

(b) They are of high educational value; when taught in a proper, precise and accurate manner, they exert a deep influence over pupils and thereby develop in them feelings that are truly those of citizens of a free country:

(i) Obedience to the law;

(ii) Respect for the rights of others;

(iii) Patriotism;

(iv) A spirit of tolerance;

(v) The sacrifice of private interests in the public interest.

(c) They eliminate numerous prejudices and protect minds from gross errors. For example, the word 'freedom' is interpreted in various erroneous ways. Although every individual is undoubtedly free, his freedom is not unlimited; it stops where the rights of others begin.

Accordingly, an enlightened civic education removes the ambiguity surrounding various concepts, such as equality, freedom, decentralization, class equality ...

It is like the culmination of history; all our country's institutions certainly have deep roots in the past.";

2. An appreciably more active and more conscious participation in the exercise of civic rights, which will be studied more closely in the context of article 25 of the Covenant;

3. A greater liberalization of political life, indirectly entailing greater awareness of the fact that everyone is equal before the law.

191. However, the application of the provisions of articles 16 and 17 of the Covenant is impeded by two obstacles. Firstly, the geographical extent of the country, a scattered population and, consequently, the remoteness of some places in which citizens are living; for the majority, i.e. in the countryside, an appearance before the competent court involves a long journey, unavoidable expenses and delays due to the inadequate administrative resources. All the developing countries are faced with this type of obstacle (excessive dispersal of the courts, inefficient communications and inevitable delays in the administration of justice, precisely because of the increasing number of persons applying to the courts).

192. Considerable efforts have been made, particularly since 1975:

(a) Establishment of decentralized local communities with a view to relieving the Administration of major tasks while, at the same time, encouraging wider participation by citizens in public affairs;

(b) Increase in the number of courts and, correspondingly, in the number of judges;

(c) Significant budget appropriations to improve communications.

While it is hoped that these efforts will bear fruit, it should not be forgotten that, in the short term, priority is accorded to economic and social problems.

193. Secondly, the civic institutions of the State have been restructured and decentralized in order to provide a legal framework for effective participation by citizens in public life through elections, so that citizens can safeguard their own interests (Ordinance No. 76-044 of 27 December 1976, establishing the regulations governing the organization, operation and powers of the decentralized local communities; Decree No. 77-037 of 16 February 1977, establishing the regulations governing administrative procedures and the powers and responsibilities of the decentralized local communities. In particular, provision has been made for active participation by citizens in safeguarding their own safety through the establishment of local security committees.

194. However, law enforcement officers cannot be trained overnight and the formation of some local safety committees, as well as participation by decentralized local communities in apprehending offenders and concluding aid and support agreements among members of a single local community, initially led to needless brutality, abuses and operations which, in fact, constituted disguised acts of vengeance and, in the case of some people, ran counter to the respect in which human beings should be held. Unfortunately, such a situation was inevitable, given the lack of a minimum of legal knowledge and a simultaneous increase in crime.

195. The public authorities rapidly took steps in order to: ensure the training of the local safety committees by law enforcement specialists; explain to the population the scope and limitations of popular participation in security; remind people of the fundamental principles of justice (no private justice - resort to the judicial authority); and give a clear definition of the respective powers of the law enforcement agencies and the population. At the present time, violent acts of private justice have become less frequent and the authority of the law enforcement agencies has been consolidated, mainly by providing them with means of transport to remain constantly in contact with the widely scattered decentralized local communities.

Article 18

196. Freedom of thought, conscience and religion has never been contested in the basic legislation of the Democratic Republic of Madagascar, such as the "Charter-Constitution bloc". The initial report seems to have contained sufficient details in this regard. Ordinance No. 62-117 of 1 October 1962, concerning religious beliefs, re-emphasizes this full freedom of thought, conscience and religion. Moreover, greater importance is currently being attached to the freedom not only to have or to adopt a religion or belief of one's choice but also to manifest it, subject to respect for public order.

197. The Committee expressed misgivings concerning the exact meaning of the expression "neutrality of the State". This expression signifies that the State neither favours nor discriminates against any of the religions practised in Madagascar and that every religious community is free to organize its own

affairs and act in a manner consistent with the law and the police regulations. In addition, this Ordinance clearly confirms the principle of the separation of Church and State.

198. However, a rapid perusal of the Ordinance could create the impression that it applied only to the large Christian churches established by religious missions dispatched to Madagascar in the past. Whereas the Protestant churches have become independent of the missions that established them, others have maintained links with their parent missions. Although the Catholic church has retained its traditional structure, almost all its clergy are now Malagasy nationals.

199. This might give rise to questions concerning the situation of the sects of indigenous origin, some of which practise a syncretized religion or an early form of Christianity. Questions might also be asked about the other religions, particularly Islam. Although not explicitly stated in the above-mentioned Ordinance, full freedom of thought, conscience and religion has always implied authorization of the activity of the sects and Islam is recognized in the same way as all the other religions. It is noteworthy that article 39 of the Constitution uses the expressions "belief" and "religion" indiscriminately.

200. No constraint is placed on the liberty of parents or legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. The only limitations imposed by the State are necessary to protect public safety, order, health, morals and the fundamental rights and freedoms of others.

Article 19

201. Freedom of opinion and expression is fully guaranteed, subject to the need to safeguard the reputation of others (protection of their legal personality), to ensure due respect for the person of the Head of State and the State's institutions, and to preserve public order. Since the submission of the initial report, immediately after the establishment of the new institutions of the Democratic Republic of Madagascar, considerable progress has been made in promoting freedom of opinion and expression.

202. Leagues or bodies seeking to defend human rights or fundamental freedoms can be established freely. They are often affiliated to international organizations pursuing the same aims and enjoy freedom of expression; they are outspoken in their criticisms and frequently take the opportunity to overstep the limits of pure information and objective opinion. However, the public authorities have never intervened to restrict freedom of opinion except in order to protect public order and ensure respect for the elementary rules of courtesy (defamation of the Head of State, slander, etc.).

203. The years that followed the submission of the initial report, and particularly 1989, were election years marked by a proliferation of groups which enjoyed a high degree of freedom to express their opinions, frequently in excess of that permitted by the Constitution. These were often de facto groups which continued their activities for a long time after the elections. Censorship was lifted. It should also be noted that the exceptional measures

taken after the events of 1972-1975, in the form of legislative provisions derogating from the ordinary law, were repealed by the Constitution of 31 December 1975.

204. The third report to the Committee concerns the period 1983-1988. The next report will provide an opportunity to analyse the fundamental legislation amending the Constitution and permitting even greater freedom of opinion and expression, particularly through the reintroduction of a multi-party system and the organization of freedom of the press.

Article 20

205. Article 20 of the Covenant deals with the prohibition of any propaganda for war and any advocacy of national, racial or religious hatred. The Malagasy people are a naturally peaceful nation. Since they are island dwellers, there is no basic problem of frontiers and as a crossroads of civilizations, they are naturally receptive to any right to be different.

206. Article 11 of the Constitution provides that the State must refrain from resorting to war if it means violating the sovereignty of the nation and the freedom of other peoples. Article 91 of the Penal Code makes it a capital offence to incite to civil war by arming or encouraging the citizens or inhabitants to take up arms against each other or to cause devastation, massacre or looting in the country. While this provision does concern civil war, it reveals, should further proof be needed, the peaceful and open nature of the Malagasy people, and their antipathy to war in general and to hatred.

207. Reference may also be made to the provisions of article 115 of the Penal Code, which prescribe penalties for sanctions against anyone who wittingly refuses to allow an individual to benefit from a right to which he is entitled on the grounds of his origin, colour, sex, family situation or the fact that he genuinely or supposedly belongs to a specific ethnic group, nation, race or religion. The penalties are doubled when the acts are committed by a representative of the public authorities or a citizen entrusted with a public function in the exercise of his duties.

Article 21

208. No provision in law forbids the right of assembly. Ordinance No. 60-104 of 21 September 1960 concerning gatherings, and Ordinance No. 60-082 of 13 August 1960, concerning public meetings and demonstrations on the public highway, are intended primarily to secure the observance of administrative rules to maintain order and security. Public meetings are generally subject to prior authorization by the Administration which may forbid a meeting deemed liable to disturb public order. Assembly on the public highway is forbidden. However, private assembly is completely free.

Article 22

209. Freedom of association is recognized by Malagasy law, which authorizes the free formation of de facto associations without legal capacity. Ordinance No. 60-133 of 3 October 1960 prescribes the formalities for persons who wish to associate freely and acquire legal capacity. Special provisions establish the conditions under which associations may be recognized as being of public interest.

210. In Madagascar, associations are extremely active and for some years there has been not only an increase in their number but also greater co-operation between associations and decentralized communities or State institutions, particularly in the social sphere. Political groups and trade unions are governed by different laws. In the case of trade unions in particular, the basic laws, particularly Ordinance No. 75-13 DM, set out the form in which trade unions may be established and the type of relations between the employers and the unions.

211. These basic legislative provisions were communicated to the Committee when the initial report was submitted and, in view of the fact that there have been no fundamental changes to them, they are mentioned here for reference purposes. Further details may, however, be provided, depending on what questions are raised.

212. There are no trade union rights for seamen, a category of workers who are not included in the Labour Code, since they are governed by the 1960 Merchant Marine Code, incorporated into the Shipping Code of 1966. In its most recent version this Code does not actually deal with the trade union rights of seamen.

213. Act No 79-014 of 20 December 1979, containing the general statutes of public officials, provides in article 4 that officials have the right to form unions. These unions must submit their statutes and a list of their members to the Public Service Office. For the purposes of protecting their moral and professional interests, they may make declarations to any administration and issue a summons to appear before any court. This right of officials to form unions comes under Ordinance No. 76-008 of 20 March 1976 concerning the legal régime governing Malagasy revolutionary organizations. Under articles 8 and 9 of the Ordinance, Malagasy revolutionary organizations do not have the right to carry out their activities unless they have obtained approval under a decree issued by the President of the Republic in the Council of Ministers on the basis of a report by the Minister of the Interior. In addition, the State, under the provisions of articles 24 and 25 of the same Ordinance, may at any time use its authority over the Malagasy revolutionary organizations and even proceed to dissolve them. Although the right of public officials to set up trade unions for the protection of their interests is formally recognized, the ways in which they can exercise their rights seem inconsistent with the ILO Convention concerning Freedom of Association and Protection of the Right to Organize, which the Government of Madagascar has nevertheless ratified.

214. Under the provisions of Ordinance No. 78-006 of 1 May 1978 constituting the Charter of Socialist Enterprises, priority is given, in the matter of access to the workers' committees, to members of trade unions connected with one of the Malagasy revolutionary organizations of the National Front for the Defence of the Revolution.

215. Some objections could be raised to these provisions as <u>de facto</u> restrictions on trade union freedom. However, Malagasy law is currently moving towards liberalization of political life by introducing a multi-party system; in so doing it is not abandoning the basic objectives of the Constitution, and it may therefore be thought that progress towards greater trade union freedom - in the spheres which have just been mentioned - will be achieved very shortly. Trade union life is nonetheless very active in Madagascar.

Article 23

216. The same comment may be made as when the initial report was submitted: the stability of the law shows the State's desire not to prevent in any way the exercise of the rights set out in the Covenant. This stability does not imply a lack of progress. Generally speaking, there is better acquaintance with the law, suggestions have been made for improvements and reforms to secure progress, but no new legislation was enacted during the period under consideration.

217. Article 37 of the Constitution of 31 December 1975 has not been changed. During the submission of the initial report, it was mentioned that the Constitution does not specifically lay down that the family is the natural and fundamental group unit of society. However, a provision of this nature would be superfluous in a society which is traditionally based on the family. Article 37 specifies in any case that every individual has the right to found a family and to bequeath personal property.

218. Hence the information supplied on the importance of the family in Malagasy society in the initial report remains valid. Indeed, despite the economic hardships the country has experienced, family unity has been strengthened while the legislation governing family law has not been altered in any way, and the population seems to be increasingly familiar with it.

219. Additional information nonetheless appears to be necessary. Family legislation is the same throughout Madagascar, but some traditional customs, particularly concerning family law which are not contrary to public order, have remained alive in regions where they were consistently followed.

220. Malagasy civil law includes:

Ordinance No. 62-089 of 1 October 1962, concerning marriage;

The Act of 20 November 1963, concerning filiation, adoption, rejection and guardianship;

Act No. 67-030 of 18 December 1967, concerning matrimonial régimes;

Act No. 68-012 of 4 July 1968, concerning succession, wills and donations;

Ordinance No. 62-003 of 24 July 1962, concerning names, domicile and absence;

Act No. 61-025 of 9 October 1961, concerning vital records.

It should be noted that article 11 of Ordinance No. 62-041 of 19 September 1962 also prescribes that no magistrate may refuse to judge a disagreement submitted to him on any pretext; if the law is silent, inadequate or obscure, the magistrate may base his decision on the general principles of the law and, if necessary, on the customs and traditions of the parties.

221. Family law is therefore a single law which respects the provisions of the Covenant as far as the written law is concerned, but the Malagasy legislature,

respecting everyone's right to recognition everywhere as a person before the law (cf. art. 16 of the Covenant) has not eliminated the possibility of resorting to the application of customs and traditions, provided that they are clear, well-established and in no way offend against public order and morals. These general comments may be applied to the law concerning women and children.

222. The progress made concerns not the provisions of the law, which are currently regarded as adequate, but the development of the infrastructure of society. Despite the country's difficulties on account of the world crisis, indebtedness and the demands of structural adjustment, the right to the protection of society and the State has not been lost sight of. Madagascar has made full use of the opportunities afforded by international agencies to achieve structural adjustment with a human face.

223. Since the law has not been changed, the rules concerning marriage are still those applicable when the initial report was submitted. The right freely to found a family is expressly recognized as from a marriageable age (arts. 3 to 5 of the Ordinance of 1 October 1962 on marriage). Provided they have permission from at least one of their parents, women may contract marriage as from the age of 14 and men as from the age of 17. The age of majority for marriage remains 18. No amendment has been made to the provisions expressly providing for free consent by the spouses to the marriage. Article 4 of the Ordinance of 1 October 1962 provides in particular that such consent is not valid if it is extorted by violence or given as the result of error.

224. The last paragraph of article 23 of the Covenant has raised problems for the Malagasy legislature which have not yet been fully resolved. First of all, as regards the equality of the rights and responsibilities of the spouses, no progress has been made in legislation since the initial report: the husband is the head of the family and administers the conjugal common property. However, the wife has prerogatives which enable her to take part in the management of the home and, if necessary, to resort to the courts to protect these prerogatives and to safeguard the conjugal common property. In fact, the wife helps to run the family and her agreement is required for important decisions concerning the management of the property of the spouses (art. 53 of the Ordinance of 1 October 1962, concerning marriage, and art. 23 of the Act of 18 December 1967, concerning matrimonial régimes).

225. Again, if the husband does not take his responsibilities as head of the family or administrator of the conjugal common property seriously, the wife may claim the right to perform alone the duties normally devolving on the husband (art. 53 of the Ordinance of 1 October 1962 and arts. 9 and 29 of the Act of 18 December 1967). She may also secure judicial authorization to represent her spouse, either generally, or for particular purposes (art. 58 of the Ordinance of 1 October 1962).

226. When a marriage is dissolved, if the wife has made no provisions to protect her share of the joint estate acquired by the spouses during marriage she is only entitled to one third of the estate when it is broken up. This type of division, which has sprung from a regional practice, is nowadays rightly considered unfair and has sparked off debate and led to a number of bills which give reason to conclude that within the near future the joint estate will be shared out equally.

227. Furthermore, it has been noticed that as women become aware of both their responsibilities and their rights, they increasingly resort to the remedies made available to them through the law to protect their prerogatives and thus counterbalance their husband's privileged legal status. It is likely that considerable changes will be made to family and marriage law in order to ensure an equal share of responsibilities, duties and rights as between the spouses. For the time being, such a share is achieved only indirectly, through the courts. However, it is against the interests of the family if the court has to play a part each time a spouse needs to defend his or her rights.

228. As to protection of the children after a marriage is dissolved, no amendments have been made to legislation since the initial report was submitted. After a divorce, custody of the children and visiting rights are determined in the best interests of the children (arts. 73 to 77 of the Ordinance of 1 October 1962). If either spouse dies, provisions with which the Committee is familiar (arts. 92 to 110 of the Act of 20 November 1963 on, in particular, custody) cover the return of custody and the exercise of custody over children under legal age. However, it has to be recognized that there are gaps in the law. In 1963, when the laws on custody were being drafted, the legislature noted such discrepancies as regards legal capacity and custody of minors between various customs followed at the time that it was thought better to draft a summary transitional text pending the adoption of definitive measures. Nevertheless, no definitive measure has yet been adopted. Studies are under way, although they have so far not led to the adoption of any more precise measures. This none the less again illustrates that temporary but clear measures have so far afforded children perfectly adequate protection when a marriage is dissolved.

Article 24

229. Since the initial report was prepared, no new measures have been adopted; the current measures, in particular Ordinance No. 62-038 of 19 September 1962, on child protection, have remained unaltered. This might appear surprising in view of the demographic growth in Madagascar and the predominance of a young, occasionally turbulent population whose expanding numbers are a constant source of concern for the authorities.

230. None the less, current legislation provides an effective framework for protecting children. First of all, children suffer no form of discrimination on grounds of race, sex, language, religion, national or social origin, property or birth. No discriminatory provisions may be found in any law, and the 1975 Constitution is quite clear with regard to discrimination. Article 24 also emphasizes the protective measures required by the status of minors. Efforts by the authorities in this respect have focused in particular on social and educational infrastructure, strengthening the family and co-operation with private initiative, rather than on amendments to legislation that might remain a dead letter for lack of means.

231. Filiation constitutes one of the foundations of protection for minors. The authorities and the courts have focused their efforts on effective implementation of the measures adopted on 20 November 1963, one of whose objectives was to ensure all children are of clear filiation, as filiation entails duties for parents towards children, regardless of whether they are

legitimate or natural. Furthermore, as far as the budget allows, the authorities have developed the social and educational infrastructure for the benefit of children marginalized by society (primary education, children's homes, day-care centres). The State has also encouraged private associations and non-governmental organizations to take part in setting up infrastructure to care for abandoned children.

232. Lastly, the courts have themselves been actively involved in the task of providing protection, through their broad interpretation of the provisions of article 3 of Ordinance No. 62-038 of 18 September 1962, which stipulates: "Nevertheless, whenever the safety, morals, health or education of a minor under 18 years of age are threatened, the State shall intervene, for the purpose either of aiding and assisting the family in its role as natural educator of the child, or of taking appropriate measures of educational assistance and supervision ...". On the basis of this provision, the juvenile courts have issued orders for placement in children's homes, which may be privately owned, and have arranged for each child's maintenance to be paid for out of the State budget. In spite of the difficulties experienced by the State, this practice has not been discontinued.

233. The right to registration by the civil records office and to a name has been recognized since the adoption of the Civil Status Act of 9 October 1961. However, it has to be acknowledged that the implementation of the Act has been hampered by the enormous problems of communication and access that affect families living far from urban centres. Accordingly, the Act of 9 October 1961 made provisions to allow persons to obtain a court decision to replace the lack of a document issued by the civil records office.

234. Lastly, with regard to nationality, it should be recalled that the Malagasy Nationality Code is essentially based on nationality by filiation. Articles 9 to 22 of the Ordinance of 22 July 1960, setting out the Malagasy Nationality Code, clearly provide for the application of this principle. Difficulties might none the less arise in respect of children of uncertain parentage. However, it should be recalled that Malagasy legislation has made provision for the protection of stateless persons and refugees and that, in addition, the terms of article 11 of the Malagasy Nationality Code (Ordinance of 22 July 1960) are sufficiently broad to be interpreted in the interests of any child born in Madagascar of unknown parents. Pursuant to this article, any child of unknown parentage is afforded the benefit of various presumptions based on name, physical characteristics and the social environment in which he lives. If he has already reached a certain age, the presumptions shall be based on his social behaviour or knowledge of the language. None of these factors is alone sufficient to conclude that the child is of Malagasy nationality, but as a whole they provide decisive proof that the child is of Malagasy origin.

235. In short, the progress made has essentially been in the field of educational and social structures. However, attention should be drawn to the following:

(a) The government project to reform and amend family law so as to establish an authentic family code.

(b) Decree No. 82-238 of 19 May 1982 whereby a National Children's Fund was set up. The Fund is intended to implement government policy in child protection.

Thus, through its resources, which are provided by subsidies or foreign assistance, the Fund is to contribute to the advancement and full development of children's rights, as set out in the Declaration on the Rights of the Child.

Article 25

236. The initial report gave full details of the right of all citizens to take part in the conduct of public affairs, to vote, to be elected and appointed on equal terms to public office in Madagascar. Fundamental Act No. 3 regulates the exercise of the right to vote. The amendments made up to 1975 have already been described in the initial report.

237. It should be recalled that all Malagasy citizens over 18 years of age on the date of the ballot are eligible, without distinction as to sex. Since the initial report was submitted, voters have taken part in the following elections:

Two presidential elections (1982 and 1989);

Two elections to the People's National Assembly (art. 65 of the Constitution);

Two elections of representatives to the decentralized communities (1983 and 1989).

238. Elections to the communities are particularly complex as they involve general elections at the level of the Fokontany (decentralized grass-roots organizations) to the Firaisana (comprising several Fokontany) to the Fivondronana (which comprise several Faritany, and which number six for Madagascar as a whole). Three remarks may be made in respect of these elections:

(a) The increasing interest shown by political parties in the organization of electoral campaigns;

(b) The considerable effort made by the authorities, and in particular by the Ministry of the Interior, to ensure a transparent ballot and above all to inform citizens. At each election bilingual publications have been prepared containing complete explanations of the organization of the election, the electoral calendar and organizational laws, and they are widely distributed among the population;

(c) The increasingly important role played by the Constitutional High Court as a result of the increase in the number of appeals and the efforts made by the judges of the Court to establish sound case law for future elections.

Article 26

239. This article confirms the rule of non-discrimination and equal protection under the law. The provisions mentioned earlier in this report have been described in sufficient detail, in particular in the examination of articles 2, 3, 18 and 20. Malagasy legislation remains firmly opposed to any form of discrimination based on race, colour, sex, national or social origin. It should be added that, even prior to the political liberalization that will be fully described in the third report (1989), no discrimination was made on the basis of political opinion or dissidence.

Article 27

240. Within the meaning of the Covenant, there is no ethnic, religious or linguistic minority living on the fringes of the community in Madagascar. Throughout the world, every nation is composed of various social groups that have come together to form a genuine nation. This is all the more true in Madagascar as the country is an island whose insularity has helped strengthen national unity. Such a strengthened sense of unity flows naturally from carefully planned decentralization that is based on respect for the person of each individual. For example, a university has been set up for each Faritany in order to relieve pressure in the cities and to give isolated regions a greater sense of belonging to the nation and make it easier for them to participate in national life. This decentralization also provides all citizens with equal access to a range of occupations, to higher education that is closer to everybody, and to equal access to political responsibility and public office.

241. Thus, not only is there no question of there being any ethnic minority isolated from the national community in Madagascar, but efforts at decentralization allow a larger number of citizens effectively to benefit from the rights set out in the Covenant. However, there are small foreign minorities that have, in varying degrees, taken their place within the Malagasy community. They live alongside each other and are frequently fully integrated, and no law prohibits these small minorities from sharing their own cultural life, religion and language. They essentially comprise Asian minorities that settled in Madagascar many years ago, immigrants from the colonial period, some of whom practise their own religion (in particular Islam).

242. The Government of Madagascar has always shown the greatest tolerance towards members of minorities that have not yet fully succeeded in taking their place in the Malagasy nation. Accordingly, the Government permits the building of mosques, guarantees religious freedom and has even set up a bureau for stateless persons and refugees within the Ministry of the Interior, responsible for dealing with persons whose nationality is not clearly established. Such persons are essentially required to observe the public order statutes and security regulations of the host country and not to disturb public order. In addition, in a number of circumstances the Malagasy Nationality Code allows such persons to acquire Malagasy nationality.